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Kayla Dvorak
11th Grade

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for February 17, 2005

Appointed to Judge of the 234th Judicial District Court in Harris County for a term until the next General Election and until his successor shall be duly elected and qualified, Mauricio "Reece" Rondon of Bellaire. Judge Rondon is replacing Judge Bruce Oakley who resigned.

Appointed to the State Office of Risk Management for a term to expire February 1, 2009, Ernest C. Garcia of Austin (replacing Tom Pace of Odessa whose term expired).

Appointed to the State Office of Risk Management for a term to expire February 1, 2011, Ronald James Walenta of Dallas (replacing Micaela Alvarez of McAllen whose term expired).

Appointed to the Board of Nurse Examiners for a term to expire January 31, 2011, Linda R. Rounds of Galveston (Ms. Rounds will continue to serve as chair). Ms. Rounds is being reappointed.

Appointed to the Board of Nurse Examiners for a term to expire January 31, 2011, Deborah H. Bell of Tuscola. Ms. Bell is being reappointed.

Appointed to the Board of Nurse Examiners for a term to expire January 31, 2011, Blanca Rosa Garcia, Ph.D. of Corpus Christi. Ms. Garcia is being reappointed.

Appointed to the Board of Nurse Examiners for a term to expire January 31, 2011, Beverly Jean Nutall of Bryan. Ms. Nutall is being reappointed.

Appointed to the Lower Colorado River Authority for a term to expire February 1, 2011, Ida A. Carter of Marble Falls (Ms. Carter is being reappointed).

Appointed to the Lower Colorado River Authority for a term to expire February 1, 2011, Woodrow Francis McCasland of Horseshoe Bay (replacing Robert Lambert of Horseshoe Bay whose term expired).

Appointed to the Lower Colorado River Authority for a term to expire February 1, 2011, Linda Clapp Raun of El Campo (replacing Rosemary Rust of Wharton whose term expired).

Appointed to the Lower Colorado River Authority for a term to expire February 1, 2011, B. R. "Skipper" Wallace of Lampasas (replacing F. Scott LaGrone of Georgetown whose term expired).

Appointments for February 22, 2005

Appointed to the Texas Residential Construction Commission for a term to expire February 1, 2011, Art Cuevas of Lubbock.

Appointed to the Texas Residential Construction Commission for a term to expire February 1, 2011, J. Paulo Flores of Dallas.

Appointed to the Texas Residential Construction Commission for a term to expire February 1, 2011, Lewis Brown of The Woodlands.

Appointed to be Chair of the State Board of Education for a term to expire February 1, 2007, Geraldine "Tincy" Miller of Dallas. Ms. Miller is being reappointed.

Appointed to be Presiding Judge of the Second Administrative Judicial Region for a term to expire four years from date of qualification, Olen U. Underwood of Spring. Judge Underwood is being reappointed.

Appointed to the Texas Environmental Education Partnership Fund Board for a term to expire February 1, 2007, Robert D. Brown of College Station (replacing Janis Lariviere of Austin who resigned).

Appointed to the Texas Environmental Education Partnership Fund Board for a term to expire February 1, 2007, Julie Kelleher Stacy of San Antonio (replacing Roxana Hayne of San Antonio who resigned).

TRD-200500821

THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at http://www.oag.state.tx.us. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Request for Opinions

RQ-0319-GA

Requestor:

The Honorable Bart E. Medley

Jeff Davis County Attorney

Post Office Box 201

Fort Davis, Texas 79734

Re: Whether the county attorneys of Jeff Davis and Presidio Counties may appoint each other as assistant county attorneys of their own counties (Request No. 0319-GA)

Briefs requested by March 24, 2005

RQ-0320-GA

Requestor:

Mr. Lowry Mays, Chair

Board of Regents

The Texas A&M University System

Post Office Box C-1

College Station, Texas 77844-9021

Re: Status of a state university's pre-existing contract with a law firm after a partner in the firm becomes a member of the university's board of regents (Request No. 0320-GA)

Briefs requested by March 20, 2005

For further information, please access the website at www.oag.state.tx.us. or call the Opinion Committee at 512/463-2110.

TRD-200500932
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: March 1, 2005

Opinions

Opinion No. GA-0307

The Honorable Allan B. Ritter

Chair, Committee on Economic Development Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether an individual may simultaneously serve as a trustee of the New Caney Independent School District and director of the East Montgomery County Improvement District (RQ-0269-GA)

S U M M A R Y

Under the conflicting loyalties aspect of the common-law doctrine of incompatibility, an individual may not simultaneously serve as trustee of the New Caney Independent School District and director of the East Montgomery County Improvement District.

Opinion No. GA-0308

The Honorable Wally Hatch

District Attorney

64th and 242nd Judicial Districts

Hale County Courthouse

500 Broadway, Number 300

Plainview, Texas 79072

Re: Authority of a commissioners court to require a district attorney to relinquish a vehicle (RQ-0270-GA)

S U M M A R Y

A commissioners court is permitted to adopt a county budget in which a county vehicle that has been allocated to one county officer is reallocated to another county officer. The commissioners court's budget-making authority is limited to the extent that its refusal to approve a requested expenditure precludes an elected officer from carrying out the legal responsibilities of the office.

For further information, please access the website at www.oag.state.tx.us. or call the Opinion Committee at (512) 463-2110.

TRD-200500952
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: March 2, 2005

♦ ♦ ♦

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 5. TEXAS BUILDING AND PROCUREMENT COMMISSION

CHAPTER 113. PROCUREMENT DIVISION

SUBCHAPTER A. PURCHASING

1 TAC §113.19

The Texas Building and Procurement Commission proposes amendments to 1 TAC Chapter 113, Subchapter A, Purchasing, §113.19, concerning Centralized Master Bidder's List. The proposed amendments will change the title of the rule to be consistent with the governing statute, correct various administrative errors in describing requirements of the catalog information systems vendor (CISV) program and add a specific statutory reference.

The proposed rule change will add a provision to allow vendors to reflect the term "negotiated" in lieu of the second "state price" when a vendor's government marketing strategy would be adversely affected by disclosing a state price.

The proposed rule change will include a new subsection that implements the Commission's statutory authority to prescribe a higher monetary threshold (in excess of $2,000) for non-competitive CISV purchases. The new threshold is $5,000.

The added subsection will establish a threshold that is consistent with the non-competitive for delegated purchases allowed under the provisions of Texas Government Code, §2155.132 and §113.11 of this subchapter.

Each of the proposed amendments will add clarity and eliminate ambiguity in describing the requirements of CISV program.

Cindy Reed, Executive Director, has determined for the first five year period the amendments are in effect there will be no fiscal implication for the state or local governments as a result of the proposed amendments. A positive fiscal impact on state and local governments is anticipated because the enhanced rule clarity will facilitate the use and understanding of the CISV Program component of the state procurement process.

Ms. Reed has further determined that for each year of the first five year period the amendments are in effect, the public benefit anticipated as a result of enforcing the amended rule is compliance with the current statutory requirements of Texas Government Code, Chapter 2155 and Chapter 2157. There will be a positive effect on large, small or micro-businesses that routinely participate in state business opportunities in that the enhanced rule clarity will enable businesses to better understand the registration and functional requirements of the CISV Program. There will be no anticipated economic costs to persons who are required to comply with the amended rule and there is no impact on local employment.

Comments on the proposed amendments may be submitted to Ingrid K. Hansen, General Counsel, Texas Building and Procurement Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments may also be sent via e-mail to ingrid.hansen@tbpc.state.tx.us. All comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendments to §113.19 are proposed under the authority of the Texas Government Code, Title 10, Subtitle D, §§2152.003, 2157.0611, and 2157.066 which provides the Texas Building and Procurement Commission with the authority to promulgate rules necessary to implement the sections.

The following codes are affected by the amendments: Texas Government Code, Title 10, Subtitle D, §§2157.0611, 2157.062, 2157.066, and 2157.067.

§113.19. Catalog Information Systems Vendor Program [~~Centralized Master Bidder's List~~].

(a) Upon registration on the Commission's [~~commission's~~] Centralized Master Bidders List (CMBL), a vendor wishing to sell or lease automated information systems to governmental entities in accordance with this rule shall register with the Commission [~~commission~~] as a catalog information systems vendor (CISV) by submitting a catalog Universal Resource Locator (URL), i.e., web site address.

(b) (No change.)

(c) Each vendor's catalog shall:

(1) contain a statement acknowledging that any terms and conditions in the vendor's catalog [~~catalogue~~] that conflict with the Constitution or laws of the State of Texas shall not be enforceable and, therefore, will not be binding.

(2) conform [~~Conform~~] to requirements set forth in Texas Government Code, §2157.062 and §2157.066 and any other requirements established by the Commission [~~commission~~].

(3) be maintained on a website in accordance with paragraph [~~subsection~~] (2) of this subsection [~~section~~] and include indexing and keywords consistent with the Commission's [~~commission's~~] online catalog requirements [~~Landing Page Requirements~~]. The vendor's catalog maintained on the website and in compliance with this rule shall be the official version of the catalog.

(d) Vendors are responsible for maintaining a current price list, including list and state prices in [~~on~~] their catalog. Where marketing strategy is a concern, the term "negotiated" may be substituted for the state price.

(e) (No change.)

(f) Failure of a vendor to remain active on the CMBL, or failure to conform to any other Commission [~~commission~~] rules may result in suspension or removal of CISV status. A vendor that has been suspended or removed may not market or sell products or services from its CISV catalog to the state until the cause of the suspension or removal has been resolved.

(g) - (h) (No change.)

(i) The State of Texas is committed to assisting historically underutilized businesses (HUBs) to receive a portion of the total value of all contracts that an agency will award. If the vendor qualifies as a HUB, but is not certified by the State of Texas as such, the vendor should contact the Commission [~~commission~~] to obtain a HUB certification application. Upon the request of a governmental entity, the vendor will be required to detail the amount of expenditures that have been made to material suppliers and subcontractors that are Texas certified HUBs. A vendor that has demonstrated past HUB participation is still expected to provide documentation using the reporting forms provided by a governmental entity to show its good faith effort in meeting or exceeding the state's procurement utilization goals identified in TBPC's HUB Rules (1 TAC §111.14).

(j) Pursuant to the provisions of Texas Government Code, §2157. 0611, the monetary threshold for non-competitive CISV purchases for commodities and services shall correspond with the threshold of $5,000 for non-competitive delegated purchases as set forth in TBPC's Delegated Purchases Rule, 1 TAC §113.11.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 23, 2005.

TRD-200500817
Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Earliest possible date of adoption: April 10, 2005
For further information, please call: (512) 463-4257

CHAPTER 126. SURPLUS AND SALVAGE PROPERTY PROGRAMS

SUBCHAPTER A. STATE SURPLUS AND SALVAGE PROPERTY

1 TAC §126.4

The Texas Building and Procurement Commission proposes amendments to 1 TAC §126.4, relating to State Surplus and Salvage Property.

The amendments are proposed to revise language regarding the determination of method of sale for surplus or salvage property. The amendments establish guidelines for making this determination.

The amendments are proposed in accordance with requirements of the Texas Government Code, Title 10, §2175.129 and §2175.186.

Dan Contreras, Deputy Executive Director, has determined for the first five year period the amendments are in effect, there will no fiscal implications for state agencies that initially purchased or owned the property. There will be no fiscal implication for local governments as a result of enforcing or administering the amended section.

Mr. Contreras has also determined that for each year of the first five years the amendments are in effect, the public benefit will be greater clarity in the rules as well as enhanced public awareness and availability of the rules and regulations applicable to this program. Mr. Contreras has further determined that there will be no effect on large, small or micro-businesses. There will be no anticipated economic cost to persons who are required to comply with the amendments and there will be no impact on local employment.

Comments on the proposals may be submitted to Ingrid K. Hansen, General Counsel, Texas Building and Procurement Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments may also be sent via e-mail to ingrid.hansen@tbpc.state.tx.us. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under the authority of the Texas Government Code, Title 10, §2175.001.

The following code is affected by the amendments: Government Code, Title 10, §2175.129 and §2175.186.

§126.4. Disposition of Surplus and Salvage Property to the Public by Competitive Bidding, Auction, or Direct Sale.

(a) Generally. If no state agency, political subdivision, or assistance organization desires to receive any property reported as surplus or salvage, the Commission [~~commission~~] may dispose of the property, with the exception of data processing equipment, in a method that is most advantageous to the state and the reporting agency under the circumstances. [~~Commission procedures shall establish guidelines for making this determination.~~]

(1) (No change.)

(2) Method of Sale. The Commission will consider the following criteria for determining the method of sale for surplus and salvage property:

(A) geographic location;

(B) cost of transportation if applicable;

(C) sales history for similar property;

(D) type of property; and

(E) condition of property.

(3) [~~(2)~~] Delegation of disposal authority. The Commission [~~commission~~] may delegate its authority to dispose of property not disposed of under §126.3 of this title (relating to Direct Transfer, Priority, Reporting, and other Disposition) to a state agency having possession of the property by any method listed in subsection (a)(1) of this section, so long as the method of sale chosen is most advantageous to the state under the circumstances, and the delegation is approved by the Commission. [~~Commission procedures shall establish guidelines for making this determination.~~] Any delegation under this section shall be subject to the procedures and reporting requirements in §126.2(6) of this title (relating to General Terms and Conditions).

(4) [~~(3)~~] Requirement to advertise. If the value of any property to be disposed of under this section is estimated to be worth more than $5,000, the sale shall be advertised at least one time in at least one

newspaper of general circulation in the vicinity in which the property is located.

(b) - (g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 23, 2005.

TRD-200500815
Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Earliest possible date of adoption: April 10, 2005
For further information, please call: (512) 463-4257

TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 49. EQUINE

4 TAC §49.1

The Texas Animal Health Commission (Commission) proposes an amendment to Chapter 49, §49.1, concerning "Equine." This proposal amends §49.1(m) regarding movement of untested equine to slaughter. This section is being amended to add specific language and requirements for the movement of equine from a market to slaughter. In Chapter 161 of Texas Animal Health Commission, §161.149, there is a statutory requirement regarding the transfer of ownership of equine where there must be a negative test for equine infectious anemia (E.I.A.), unless the animal is covered by an exception. One exception is that the equine be "sold to slaughter, to be tested at the slaughter facility at Commission expense." This requirement was promulgated into regulation and located as §49.1(l).

Currently when equine are sold through a market without a test and destined for slaughter they are permitted using a VS 1-27 form and identified with a red collar, with a number, and issued by the commission. However there has been a problem identified by our field personnel regarding the difficulty of verifying the arrival of those equine. There seems to be several possible explanations including removal of the red collar before our personnel can verify arrival, or a number of the animals are never taken to slaughter, but rather diverted to be resold. Because this transfer process is not specifically stated in the requirements an initial step to hopefully remedy the problem is provide greater specificity in our requirements regarding this process. This will provide these slaughter horse buyers with specific requirements to follow as well as give the agency stronger compliance options.

Section 49.1(m) is being amended because it already has language regarding movement of equine to slaughter. The commission is inserting language to indicate that the requirement is applicable to any equine sold, "without a negative EIA test through a market," which conforms to §49.1(l). The commission is modifying the existing requirement of being on a VS-1-27 and utilizing language to state that the equine are "permitted for movement, by an accredited veterinarian or other authorized state or federal personnel, to slaughter" because it will provide for greater flexibility in the permitting process. The permit shall be signed by the consignor and contain information regarding permanent identification (i.e. branding, tagging or other means acceptable to the commission) of the equine, or by using the number on the red collar issued by the commission. This information will be verified at arrival at the slaughter facility. This is intended to provide a specifically stated requirement which is applicable to a person who buys a horse for slaughter. The requirements are also being amended to provide for a timeframe for arrival at slaughter to ensure greater accountability by the buyer or consignor. These equine shall arrive at the slaughter facility no later than ten days from the date of the issuance of the permit. This is because some buyers take a very long time to actually take the permitted animal to slaughter which makes verification more difficult on agency personnel.

FISCAL NOTE

Mike Jensen, Deputy Director for Administration and Finance, Texas Animal Health Commission, has determined for the first five-year period the amendment is in effect, there will be no additional fiscal implications for state or local government as a result of enforcing or administering the amended section.

PUBLIC BENEFIT NOTE

Mr. Jensen also has determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be clear and concise regulations which can be found in one chapter. There will be no effect on large, micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Government Code, §2001.022, this agency has determined that the adopted rule will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

TAKINGS ASSESSMENT

The agency has determined that the proposed governmental action will not affect private real property. The adopted rule is an activity related to the handling of animals, including requirements concerning testing, movement, inspection, identification, reporting disease, and treatment, in accordance with 4 TAC §59.7, and are, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

REQUEST FOR COMMENT

Comments regarding the proposed amendment may be submitted to Delores Holubec, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0721 or by e-mail at "comment@tahc.state.tx.us."

STATUTORY AUTHORITY

The amendment is proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, by §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the commission determines that a disease listed in §161.041 of this code

or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place. That is found in §161.061.

As a control measure, the commission by rule may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That is found in §161.054. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. That authority is found in §161.048.

Section 161.005 provides that the commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire commission.

Section 161.061 provides that if the commission determines that a disease listed in §161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state where livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place.

No other statutes, articles, or codes are affected by the amendment.

§49.1. Equine Infectious Anemia (EIA): Identification and Handling of Infected Equine.

(a) - (l) (No change.)

(m) Any equine sold, through a market, which has not had a negative EIA test in the twelve months preceding the date of sale [~~to slaughter~~] must be permitted for movement, by an accredited veterinarian or other authorized state or federal personnel, to slaughter. The permit shall be signed by the consignor and contain information regarding either permanent identification (i.e. branding, tagging or other means acceptable to the commission) of the equine or by the number on a red collar, issued by the commission, to be verified at the [~~accompanied by a VS Form 1-27 permit issued by an accredited veterinarian or other authorized state or federal personnel when moved to~~ a] slaughter plant, slaughter-only market, or slaughter-only buying facility. These equine shall arrive at the slaughter facility no later than ten days from the date of the issuance of the permit.

(n) - (r) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2005.

TRD-200500885
Gene Snelson
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: April 10, 2005
For further information, please call: (512) 719-0700

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TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 109. TRANSACTIONS EXEMPT FROM REGISTRATION

7 TAC §109.3

The Texas State Securities Board proposes an amendment to §109.3, concerning financial institutions under the Texas Securities Act (Act) §5.H. The amendment would simplify the rule to only address the Board's long-standing definition of "savings institution" for purposes of the §5.H exemption. The other components of the current §109.3 would be moved into three new rules that are being concurrently proposed as §§109.4, 109.5, and 109.6, each addressing a different category of registration exemption. This proposal is identical to the one previously published in the August 13, 2004, issue of the *Texas Register* (29 TexReg 7826), which has since expired.

Micheal Northcutt, Director, Registration Division, has determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Northcutt also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be ease in locating definitions of terms used in §5.H of the Act. There will be no effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed section in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

Statutory authority: Texas Civil Statutes, Articles 581-28-1 and 581-5.T. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 5.T provides that the Board may prescribe new exemptions by rule.

Cross-reference to Statute: Texas Civil Statutes, Article 581-5.

Statutes and codes affected: Texas Civil Statutes, Article 581-5.

§109.3. [~~Sales to~~] Financial Institutions [~~and Certain Institutional Investors~~] under the Texas Securities Act, §5.H.

[~~(a) Savings institutions.~~] The term "savings institution," as used in the Texas Securities Act, §5.H, includes any federally chartered credit union, savings and loan association, or federal savings bank, and

any credit union or savings and loan association chartered under the laws of any state of the United States.

[(b) Sales to financial institutions and certain institutional investors acting as agent.]

[(1) The sale of securities to a financial institution or other institutional investor listed in the Securities Act, §5.H, or subsection (c) of this section, is not exempt under §5.H or subsection (c) of this section if the financial institution or other institutional investor named therein is in fact acting only as agent for another purchaser that is not a financial institution or other institutional investor listed in §5.H or subsection (c) of this section.]

[(2) The Securities Act, §5.H, and subsection (c) of this section exempt only sales to a financial institution or other institutional investor named therein acting for its own account or as a bona fide trustee of a trust organized and existing other than for the purpose of acquiring the specific securities for which the seller is claiming an exemption under §5.H or subsection (c) of this section.]

[(c) Sales to certain institutional investors. The State Securities Board, pursuant to the Securities Act, §5.T, exempts from the securities registration requirements of the Securities Act, §7, the offer and sale of any securities to any of the following purchasers:]

[(1) an "accredited investor" (as that term is defined in Rule 501(a)(1)-(4), (7), and (8) promulgated by the Securities and Exchange Commission (SEC) under the Securities Act of 1933, as amended (1933 Act), as made effective in SEC Release Number 33-6389, as amended in Release Numbers 33-6437, 33-6663, 33-6758, and 33-6825), excluding, however, any self-directed employee benefit plan with investment decisions made solely by persons that are "accredited investors" as defined in Rule 501(a)(5)-(6);]

[(2) any "qualified institutional buyer" (as that term is defined in Rule 144A(a)(1) promulgated by the SEC under the 1933 Act, as made effective in SEC Release Number 33-6862, and amended in Release Number 33-6963); and]

[(3) a corporation, partnership, trust, estate, or other entity (excluding individuals) having net worth of not less than $5 million, or a wholly-owned subsidiary of such entity, as long as the entity was not formed for the purpose of acquiring the specific securities.]

[(d) Financial statements. For purposes of determining a purchaser's total assets or net worth under this section, the issuer and the seller may rely upon the entity's most recent annual balance sheet or other financial statement which shall have been audited by an independent accountant or which shall have been verified by a principal of the purchaser.]

[(e) Exemption from registration for dealers, salesmen, investment advisers, and agents. The State Securities Board, pursuant to the Texas Securities Act, §5.T and §12.B, exempts a dealer, salesman, investment adviser, or agent from the dealer registration requirements of the Texas Securities Act, when such person is engaging in the offer or sale of securities and/or the rendering of investment advisory services to a financial institution or other institutional investor listed in the Texas Securities Act, §5.H, or subsection (c) of this section, where such financial institution or other institutional investor is acting for its own account or as a bona fide trustee of a trust organized and existing other than for the purpose of acquiring the specific securities or the investment advisory services for which the dealer, salesman, investment adviser, or agent is claiming an exemption under §5.H or subsection (c) of this section.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 23, 2005.

TRD-200500833
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Earliest possible date of adoption: April 10, 2005
For further information, please call: (512) 305-8300

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7 TAC §§109.4 - 109.6

The Texas State Securities Board proposes new §109.4, concerning securities registration exemption for sales to financial institutions and certain institutional investors; §109.5, concerning dealer registration exemption for sales to financial institutions and certain institutional investors; and §109.6, concerning investment adviser registration exemption for investment advice to financial institutions and certain institutional investors. These new sections are based on the exemption contained in current §109.3, which is being concurrently amended; and the Board's prior proposed new §§109.4 - 109.6, published in the August 13, 2004, issue of the *Texas Register* (29 TexReg 7827), which have since expired. The proposed exemption from investment adviser registration, set out in §109.6, has been drafted to provide consistent treatment with the Securities and Exchange Commission rule that contains an exemption from registration for an investment adviser to a venture capital fund.

Micheal Northcutt, Director, Registration Division; Benette Zivley, Director, Inspections and Compliance Division; and John Morgan, Director, Enforcement Division, have determined that for the first five-year period the rules are in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Northcutt, Mr. Zivley, and Mr. Morgan also have determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be to clarify the applicability of exemptions for transactions with financial institutions and certain institutional investors to different categories of participants, namely, persons selling securities, dealers, and investment advisers. There will be no effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed sections in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

Statutory authority: Texas Civil Statutes, Articles 581-28-1, 581-5.T, and 581-12C. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 5.T provides that the

Board may prescribe new exemptions by rule. Section 12.C provides the Board with the authority to prescribe new dealer/agent and investment adviser/representative registration exemptions by rule.

Cross-reference to Statute: Texas Civil Statutes, Articles 581-5, 581-7, 581-12, 581-12-1, and 581-18.

Statutes and codes affected: Texas Civil Statutes, Articles 581-5, 581-7, 581-12, 581-12-1, and 581-18.

§109.4. Securities Registration Exemption for Sales to Financial Institutions and Certain Institutional Investors.

(a) Availability. The exemption from securities registration provided by the Texas Securities Act, §5.H, or this section is not available if the financial institution or other institutional investor named therein is in fact acting only as agent for another purchaser that is not a financial institution or other institutional investor listed in §5.H or this section. These exemptions are available only if the financial institution or other institutional investor named therein is acting for its own account or as a bona fide trustee of a trust organized and existing other than for the purpose of acquiring the specific securities for which the seller is claiming the exemption.

(b) Sales to certain institutional investors. The State Securities Board, pursuant to the Act, §5.T, exempts from the securities registration requirements of the Act, §7, the offer and sale of any securities to any of the following persons:

(1) an "accredited investor" (as that term is defined in Rule 501(a)(1)-(4), (7), and (8) promulgated by the Securities and Exchange Commission (SEC) under the Securities Act of 1933, as amended (1933 Act), as made effective in SEC Release Number 33-6389, as amended in Release Numbers 33-6437, 33-6663, 33-6758, and 33-6825), excluding, however, any self-directed employee benefit plan with investment decisions made solely by persons that are "accredited investors" as defined in Rule 501(a)(5)-(6);

(2) any "qualified institutional buyer" (as that term is defined in Rule 144A(a)(1) promulgated by the SEC under the 1933 Act, as made effective in SEC Release Number 33-6862, and amended in Release Number 33-6963); and

(3) a corporation, partnership, trust, estate, or other entity (excluding individuals) having net worth of not less than $5 million, or a wholly-owned subsidiary of such entity, as long as the entity was not formed for the purpose of acquiring the specific securities.

(c) Financial statements. For purposes of determining a purchaser's total assets or net worth under this section, the issuer and the seller may rely upon the entity's most recent annual balance sheet or other financial statement which shall have been audited by an independent accountant or which shall have been verified by a principal of the purchaser.

§109.5. Dealer Registration Exemption for Sales to Financial Institutions and Certain Institutional Investors.

(a) Availability. The exemption from dealer and agent registration provided by the Texas Securities Act, §5.H, or this section is not available if the financial institution or other institutional investor named therein is in fact acting only as agent for another purchaser that is not a financial institution or other institutional investor listed in §5.H or this section. These exemptions are available only if the financial institution or other institutional investor named therein is acting for its own account or as a bona fide trustee of a trust organized and existing other than for the purpose of acquiring the specific securities for which the dealer or agent is claiming the exemption.

(b) Sales to certain institutional investors. The State Securities Board, pursuant to the Act, §5.T and §12.C, exempts a person from the dealer and agent registration requirements of the Act, when the person sells or offers for sale any securities to any of the following persons:

(1) an "accredited investor" (as that term is defined in Rule 501(a)(1)-(4), (7), and (8) promulgated by the Securities and Exchange Commission (SEC) under the Securities Act of 1933, as amended (1933 Act), as made effective in SEC Release Number 33-6389, as amended in Release Numbers 33-6437, 33-6663, 33-6758, and 33-6825), excluding, however, any self-directed employee benefit plan with investment decisions made solely by persons that are "accredited investors" as defined in Rule 501(a)(5)-(6);

(2) any "qualified institutional buyer" (as that term is defined in Rule 144A(a)(1) promulgated by the SEC under the 1933 Act, as made effective in SEC Release Number 33-6862, and amended in Release Number 33-6963); and

(3) a corporation, partnership, trust, estate, or other entity (excluding individuals) having net worth of not less than $5 million, or a wholly-owned subsidiary of such entity, as long as the entity was not formed for the purpose of acquiring the specific securities.

(c) Financial statements. For purposes of determining a purchaser's total assets or net worth under this section, the issuer and the seller may rely upon the entity's most recent annual balance sheet or other financial statement which shall have been audited by an independent accountant or which shall have been verified by a principal of the purchaser.

§109.6. Investment Adviser Registration Exemption for Investment Advice to Financial Institutions and Certain Institutional Investors.

(a) Availability. The exemption from investment adviser and investment adviser representative registration provided by the Texas Securities Act, §5.H, or this section is not available if the financial institution or other institutional investor named therein is in fact acting only as agent for another purchaser that is not a financial institution or other institutional investor listed in §5.H or this section. These exemptions are available only if the financial institution or other institutional investor named therein is acting for its own account or as a bona fide trustee of a trust organized and existing other than for the purpose of acquiring the investment advisory services for which the investment adviser or investment adviser representative is claiming the exemption.

(b) Investment advice rendered to certain institutional investors. The State Securities Board, pursuant to the Act, §5.T and §12.C, exempts from the investment adviser and investment adviser representative registration requirements of the Act, persons who render investment advisory services to any of the following:

(1) an "accredited investor" (as that term is defined in Rule 501(a)(1)-(3), (7), and (8) promulgated by the Securities and Exchange Commission (SEC) under the Securities Act of 1933, as amended (1933 Act), as made effective in SEC Release Number 33-6389, as amended in Release Numbers 33-6437, 33-6663, 33-6758, and 33-6825);

(2) any "qualified institutional buyer" (as that term is defined in Rule 144A(a)(1) promulgated by the SEC under the 1933 Act, as made effective in SEC Release Number 33-6862, and amended in Release Number 33-6963); and

(3) a corporation, partnership, trust, estate, or other entity (excluding individuals) having net worth of not less than $5 million, or a wholly-owned subsidiary of such entity, as long as the entity was not formed for the purpose of receiving investment advice or investing in securities.

(c) Investment advice rendered to natural persons and private funds. There is no exemption for an investment adviser to a natural person or to a private fund, such as a hedge fund, that is composed partially or entirely of natural persons. A "private fund" includes a company that:

(1) would be subject to regulation under the federal Investment Company Act of 1940 but for the exception from the definition of "investment company" provided in either §3(c)(1) or §3(c)(7) of such Act;

(2) permits investors to redeem their interests in the fund within two years of purchasing them; and

(3) offers interests in the company based on the investment advisory skills, ability or expertise of the investment adviser.

(d) Financial statements. For purposes of determining a purchaser's total assets or net worth under this section, the issuer and the seller may rely upon the entity's most recent annual balance sheet or other financial statement which shall have been audited by an independent accountant or which shall have been verified by a principal of the purchaser.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 23, 2005.

TRD-200500834
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Earliest possible date of adoption: April 10, 2005
For further information, please call: (512) 305-8300

CHAPTER 115. SECURITIES DEALERS AND AGENTS

7 TAC §115.3

The Texas State Securities Board proposes an amendment to §115.3, concerning dealer and agent examinations. The amendment would add an examination waiver for a person whose prior registration has lapsed for more than two years, but who, during the period of the lapse, has been continually registered with the National Association of Securities Dealers (NASD) and the state securities regulator in the state in which the person maintains its principal place of business. Additionally, some cross-references would be updated.

Micheal Northcutt, Director, Registration Division, and Benette Zivley, Director, Inspections and Compliance Division, have determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Northcutt and Mr. Zivley also have determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be that examination waivers in this circumstance will be processed more quickly and be treated uniformly. There will be no effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed section in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

Statutory authority: Texas Civil Statutes, Articles 581-28-1 and 581-13.D. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 13.D provides the Board with authority to waive examination requirements for any applicant or class of applicants.

Cross-reference to Statute: Texas Civil Statutes, Articles 581-13 and 581-19.

Statutes and codes affected: Texas Civil Statutes, Articles 581-13 and 581-19.

§115.3. Examination.

(a) - (b) (No change.)

(c) Waivers of examination requirements.

(1) (No change.)

(2) A full waiver of the examination requirements of the Texas Securities Act, §13.D, is granted by the Board to the following classes of persons:

(A) - (C) (No change.)

(D) officers and employees whose firms restrict their officers' and employees' securities activities to acting as brokers between and among principals for the sale of a majority of the stock or equity securities of a privately held business pursuant to a privately negotiated purchase agreement, where the managerial control of the business will devolve upon the purchaser(s) and where compensation received by the firm will be payable for the brokerage activities only; [~~and~~]

(E) a person who completed the required examinations [~~required under this subsection~~], but whose registration has lapsed for more than two years and who has been continually employed in a securities-related position with an entity which was not required to be registered; and [~~.~~]

(F) a person who completed the required examinations, but whose registration has lapsed for more than two years and who has been continually registered during the period of the lapse (or unregistered for no more than 60 days when transferring from one employer to another) with the NASD and the state securities regulator in the state in which the person maintains its principal place of business.

(3) A partial waiver of the examination requirements of the Texas Securities Act, §13.D, is granted by the Board to the following classes of persons:

(A) applicants who have been continuously registered with the Securities and Exchange Commission, National Association of Securities Dealers, New York Stock Exchange, or any other exchange listed in the Act, §6.F, [~~of the Texas Securities Act~~] or recognized by the Board pursuant to §111.2 of this title (relating to Listed and Designated Securities) [~~the rules~~] for 10 years immediately preceding the

application for registration in Texas. These applicants are required to pass an examination on state securities law as required by subsection (b)(4) of this section;

(B) (No change.)

(C) applicants seeking registration for the purpose of dealing exclusively in real estate syndication interests or condominium securities, provided such persons are licensed, at the time of application, under The Real Estate License Act (Texas Occupations Code, Chapter 1101 [~~Texas Civil Statutes, Article 6573a et seq.~~]). Such persons are not required to take a general securities examination, but are required to pass an examination on state securities law as required by subsection (b)(4) of this section;

(D) - (E) (No change.)

(4) (No change.)

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 23, 2005.

TRD-200500835
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Earliest possible date of adoption: April 10, 2005
For further information, please call: (512) 305-8300

CHAPTER 116. INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

7 TAC §116.3

The Texas State Securities Board proposes an amendment to §116.3, concerning investment adviser and investment adviser representative examinations. The amendment would add an examination waiver for a person whose prior registration has lapsed for more than two years, but who has nevertheless been continually registered with the state securities regulator in the state where the person maintains its principal place of business. Additionally, some cross-references would be updated and an organizational name change would be noted.

Micheal Northcutt, Director, Registration Division, and Benette Zivley, Director, Inspections and Compliance Division, have determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Northcutt and Mr. Zivley also have determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be that examination waivers in this circumstance will be processed more quickly and be treated uniformly. There will be no effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed section in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

Statutory authority: Texas Civil Statutes, Articles 581-28-1 and 581-13.D. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 13.D provides the Board with authority to waive examination requirements for any applicant or class of applicants.

Cross-reference to Statute: Texas Civil Statutes, Articles 581-13 and 581-19.

Statutes and codes affected: Texas Civil Statutes, Articles 581-13 and 581-19.

§116.3. Examination.

(a) - (b) (No change.)

(c) Waivers of examination requirements.

(1) (No change.)

(2) A full waiver of the examination requirements of the Texas Securities Act, §13.D, is granted by the Board to the following classes of persons:

(A) (No change.)

(B) applicants who are certified by the CFA Institute [~~Association for Investment Management and Research~~], or its predecessors, the Association for Investment Management and Research, the [~~Federation of Chartered~~] Financial Analysts Federation, or [~~by~~] the Institute of Chartered Financial Analysts, to be chartered financial analysts (CFA);

(C) - (E) (No change.)

(F) applicants who are designated by the American College, Bryn Mawr, Pennsylvania, as chartered financial consultants (ChFC); [~~or~~]

(G) a person who completed the required examinations [~~required under subsection (b) of this section~~], but whose registration has lapsed for more than two years and who has been continually employed in a securities-related position with an entity which was not required to be registered; and [~~.~~]

(H) a person who completed the required examinations, but whose registration has lapsed for more than two years and who has been continually registered during the period of the lapse (or unregistered for no more than 60 days when transferring from one employer to another) with the state securities regulator in the state in which the person maintains its principal place of business.

(3) The CFA Institute [~~Association for Investment Management and Research~~], the Certified Financial Planner Board of Standards, Inc., the American Institute of Certified Public Accountants, the American College, and the Investment Counsel Association of America, Inc., are required to submit to the Securities Commissioner any changes to their certification programs as such changes occur.

(4) - (5) (No change.)

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200500836
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Earliest possible date of adoption: April 10, 2005
For further information, please call: (512) 305-8300

7 TAC §116.10

The Texas State Securities Board proposes an amendment to §116.10, concerning supervisory requirements, to clarify that the supervisory systems are required to be in writing.

Benette Zivley, Director, Inspections and Compliance Division, has determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Zivley also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to explicitly inform registered investment advisers that their supervisory system, required by the rule, must be reduced to writing. There will be no effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed section in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

Statutory authority: Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

Cross-reference to Statute: Texas Civil Statutes, Article 581-1, et seq.

Statutes and codes affected: none applicable.

§116.10. Supervisory Requirements.

Each registered investment adviser shall establish and maintain a system to supervise the activities of its investment adviser representatives that is reasonably designed to achieve compliance with the Texas Securities Act and Board rules. Supervisory systems must be written and available for inspection in either print or electronic format.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 23, 2005.

TRD-200500837
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Earliest possible date of adoption: April 10, 2005
For further information, please call: (512) 305-8300

7 TAC §116.16

The Texas State Securities Board proposes new §116.16, concerning unethical business practices of investment advisers and their representatives. The proposal is based on the recently amended model rule promulgated by the North American Securities Administrators Association (NASAA).

John Morgan, Director, Enforcement Division, and Benette Zivley, Director, Inspections and Compliance Division, have determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Morgan and Mr. Zivley also have determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to place registered investment advisers and investment adviser representatives on notice of activities that are prohibited. There will be no effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed section in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

Statutory authority: Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

Cross-reference to Statute: Texas Civil Statutes, Article 581-14.

Statutes and codes affected: Texas Civil Statutes, Article 581-14.

§116.16. Unethical Business Practices of Investment Advisers.

(a) A person who is an investment adviser or a federal covered adviser is a fiduciary and has a duty to act primarily for the benefit of its clients. The provisions of this subsection apply to federal covered advisers to the extent that the conduct alleged is fraudulent or deceptive. While the extent and nature of this duty varies according to the nature of the relationship between an investment adviser and its clients and the circumstances of each case, an investment adviser or a federal covered adviser shall not engage in unethical business practices, including the following:

(1) recommending to a client to whom supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's

investment objectives, financial situation and needs, and any other information known by the investment adviser;

(2) exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both;

(3) inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account in light of the fact that an adviser in such situations can directly benefit from the number of securities transactions effected in a client's account (This paragraph appropriately forbids an excessive number of transaction orders to be induced by an adviser for a "customer's account.");

(4) placing an order to purchase or sell a security for the account of a client without authority to do so;

(5) placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client;

(6) borrowing money or securities from a client unless the client is a dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds;

(7) loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser;

(8) misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser or any employee of the investment adviser, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or omitting to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading;

(9) providing a report or recommendation to any advisory client prepared by someone other than the adviser without disclosing that fact (This prohibition does not apply to a situation where the adviser uses published research reports or statistical analyses to render advice or where an adviser orders such a report in the normal course of providing service.);

(10) charging a client an unreasonable advisory fee;

(11) failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:

(A) compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and

(B) charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the adviser or its employees;

(12) guaranteeing a client that a specific result will be achieved (gain or no loss) with advice which will be rendered;

(13) publishing, circulating or distributing any advertisement which does not comply with SEC Rule 206 (4)-1, under the Investment Advisers Act of 1940, as made effective in SEC Release Number IA-121, and as amended in Release Numbers IA-1633 and IA-2333;

(14) disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to by the client;

(15) entering into, extending or renewing any investment advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the adviser and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract;

(16) failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information contrary to the provisions of the Investment Advisers Act of 1940, §204A;

(17) entering into, extending, or renewing any advisory contract contrary to the provisions of the Investment Advisers Act of 1940, §205 (This provision shall apply to all advisers registered or required to be registered under the Texas Securities Act, notwithstanding whether such adviser would be exempt from federal registration pursuant to the Investment Advisers Act of 1940, §203(b));

(18) indicating, in an advisory contract, any condition, stipulation, or provisions binding any person to waive compliance with any provision of the Texas Securities Act or of the Investment Advisers Act of 1940, or any other practice contrary to the provisions of the Investment Advisers Act of 1940, §215;

(19) engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative or otherwise contrary to the provisions of the Investment Advisers Act of 1940, §206(4), notwithstanding the fact that such investment adviser is not registered or required to be registered under the Investment Advisers Act of 1940, §203; or

(20) engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of the Texas Securities Act or Board Rules.

(b) The conduct set forth in subsection (a) of this section is not exclusive. Engaging in other conduct including, but not limited to, nondisclosure, incomplete disclosure, or deceptive practices, shall be deemed an unethical business practice. The federal statutory and regulatory provisions referenced in this section shall apply to investment advisers and federal covered advisers, to the extent permitted by the National Securities Markets Improvement Act of 1996, Public Law Number 104-290.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 23, 2005.

TRD-200500838
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Earliest possible date of adoption: April 10, 2005
For further information, please call: (512) 305-8300

CHAPTER 133. FORMS

7 TAC §133.2

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the State Securities Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas State Securities Board proposes the repeal of §133.2, a form concerning public information charges--billing detail. Repeal of the existing form will allow for the simultaneous adoption of a new form, which is being concurrently proposed.

Carla James, Director, Staff Services Division, has determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. James also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be the elimination of an outdated form. There will be no effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed section in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

Statutory authority: Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

Cross-reference to Statute: Texas Government Code §552.262.

Statutes and codes affected: none applicable.

§133.2. Public Information Charges--Billing Detail.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 23, 2005.

TRD-200500839
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Earliest possible date of adoption: April 10, 2005
For further information, please call: (512) 305-8300

7 TAC §133.2

The Texas State Securities Board proposes a new §133.2, a form concerning public information charges--billing detail. The new section adopts by reference a form that reflects changes in the fees for public information established by the Texas Building and Procurement Commission in accordance with the Public Information Act. The existing form 133.2 is being concurrently proposed for repeal.

Carla James, Director, Staff Services Division, has determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. James also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be that the rule accurately apprises persons requesting public information of the associated charges. There will be no effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed section in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

Statutory authority: Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

Cross-reference to Statute: Texas Government Code §552.262.

Statutes and codes affected: none applicable.

§133.2. Public Information Charges--Billing Detail.

The State Securities Board adopts by reference the public information charges--billing detail form. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 23, 2005.

TRD-200500840
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Earliest possible date of adoption: April 10, 2005
For further information, please call: (512) 305-8300

CHAPTER 139. EXEMPTIONS BY RULE OR ORDER

7 TAC §139.16

The Texas State Securities Board proposes an amendment to §139.16, concerning sales to individual accredited investors, to explicitly address investment intent of purchasers.

John Morgan, Director, Enforcement Division, and Micheal Northcutt, Director, Registration Division, have determined that for the first five-year period the amendment is in effect

there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mr. Morgan and Mr. Northcutt also have determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amended section will be to clarify the requirement that an issuer reasonably believe that purchases are made with investment intent. There will be no effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed amendment in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

Statutory authority: Texas Civil Statutes, Articles 581-28-1 and 581-5.T. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 5.T provides that the Board may prescribe new exemptions by rule.

Cross-reference to Statute: Texas Civil Statutes, Article 581-5.

Statutes and codes affected: Texas Civil Statutes, Article 581-7.

§139.16. Sales to Individual Accredited Investors.

(a) - (j) (No change.)

(k) Investment intent; resales. The issuer and any person acting on its behalf shall exercise reasonable care to assure that the purchasers are acquiring the securities as an investment. Such reasonable care should include, but not be limited to, the following:

(1) having reasonable grounds to believe and, after making reasonable inquiry, believe that the purchaser is acquiring the securities with investment intent for his or her own account or on behalf of other persons and not for resale or with a view toward distribution;

(2) placing a legend on the certificate or other document evidencing the securities to the effect that the securities have not been registered under any securities law and setting forth or referring to the restrictions on transferability and sale of the securities;

(3) issuing stop transfer instructions to the issuer's transfer agent, if any, with respect to the securities, or, if the issuer transfers its own securities, making a notation in the appropriate records of the issuer; and

(4) obtaining from the purchaser a signed written agreement to the effect that the securities will not be sold without registration under applicable securities laws or exemptions therefrom.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 23, 2005.

TRD-200500841

Denise Voigt Crawford
Securities Commissioner
State Securities Board
Earliest possible date of adoption: April 10, 2005
For further information, please call: (512) 305-8300

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER O. UNBUNDLING AND MARKET POWER

DIVISION 1. UNBUNDLING

16 TAC §25.343

The Public Utility Commission of Texas (commission) proposes an amendment to §25.343, relating to Competitive Energy Services. The proposed amendment will allow an electric utility to provide services to the electric distribution systems of military bases as a discretionary service, rather than as a competitive energy service. This rule is a competition rule subject to judicial review as specified in Public Utility Regulatory Act (PURA) §39.001(e). Project Number 30719 is assigned to this proceeding.

United States military bases have traditionally owned and operated their own electric distribution systems. However, the Utility System Privatization Act, effective November 24, 2003, gave individual bases the option to convey or lease their distribution systems to outside entities to lower costs for operation and maintenance. *See* 10 U.S.C. §2688 (2003).

Under the commission's rule on competitive energy services, providing operations and maintenance services for customer-owned electric facilities is classified as a competitive service. Military bases in Texas that are not situated within or very near major metropolitan areas have sought to acquire such services on a competitive basis but have had difficulty attracting offers for service from private providers. The transmission and distribution utilities (TDU), however, can credibly offer operation and maintenance service for a military base distribution system. Current commission rules, however, bar TDUs from providing competitive energy services. The proposed amendment would permit TDUs to bid on contracts to operate and maintain military base distribution systems by providing that services to those bases shall be considered discretionary services rather than competitive energy services.

Jeff Luna, Analyst, Electric Division has determined that, for each year of the first five-year period the proposed section is in effect, there will be no fiscal implications for local government as a result of enforcing or administering the section; there is no foreseeable direct or indirect implication for costs or revenues for local governments.

Mr. Luna has determined that, for each year of the first five years the proposed section is in effect, the public benefit anticipated as

a result of enforcing this section is the potential for reduced military expenditures and higher quality of service in the provision of electric delivery service to customers on military bases in Texas. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section; it is expected that small and micro-businesses would have difficulty in qualifying to bid to perform operation and maintenance for military base distribution systems. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Mr. Luna has also determined that, for each year of the first five years the proposed section is in effect, there should be no impact on local employment; therefore, no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

If requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, the commission staff will conduct a public hearing on this rulemaking on Friday, April 8, 2005, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. The request for a public hearing must be received within 30 days after publication.

Comments on the proposed amendment may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Sixteen copies of comments to the amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 30719. When commenting on specific subsections of the proposed rule, parties are encouraged to describe "best practice" examples of regulatory policies, and their rationale, that have been proposed or implemented successfully in other states already undergoing electric industry restructuring, if the parties believe that Texas would benefit from application of the same policies. The commission is interested in receiving "leading edge" examples which are specifically related and directly applicable to the Texas statute rather than broad citations to other state restructuring efforts.

This amendment is proposed under PURA §14.002, which authorizes the Public Utility Commission to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and, specifically, §14.001, which authorizes the commission to regulate the business of public utilities within its jurisdiction; §39.001, which authorizes the commission to adopt rules for transition to a fully competitive electric power industry; §39.051, which requires each electric utility to separate its regulated utility activities from its customer energy services activities by unbundling its business activities to create, *inter alia*, a separate transmission and distribution utility; and §39.203, which requires TDUs to provide transmission and distribution services.

Cross Reference to Statutes: Public Utility Regulatory Act: §§14.001, 14.002, 39.001, 39.051, and 39.203.

§25.343. Competitive Energy Services.

(a) - (e) (No change.)

(f) Exceptions related to certain competitive energy services. An electric utility may not own, operate, maintain or provide other services related to equipment of the type described in §25.341(3)(F) of this title, except in any of the following instances or as otherwise provided in this subchapter or by commission order.

(1) - (4) (No change.)

(5) An electric utility may provide services associated with the privatization of electric distribution systems of military bases undertaken pursuant to the Utility System Privatization Act, codified at 10 U.S.C. §2688. The provision of such services by an electric utility shall be considered discretionary services and shall not be considered competitive energy services.

(g) - (i) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 24, 2005.

TRD-200500859
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: April 10, 2005
For further information, please call: (512) 936-7223

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PART 8. TEXAS RACING COMMISSION

CHAPTER 303. GENERAL PROVISIONS
SUBCHAPTER A. ORGANIZATION OF THE COMMISSION

16 TAC §303.17

The Texas Racing Commission proposes new §303.17, relating to vendor protests. The Commission is required to adopt protest procedures for resolving vendor protests relating to purchasing issues pursuant to Government Code, §2155.076.

Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, has determined that for the first five year period the new section is in effect there will be no fiscal implications for state or local government as a result of enforcing the section.

Ms. Flowerday has also determined that for each of the first five years the new section is in effect the anticipated public benefit will be that the Commission's purchasing processes will conform fully to applicable state law. There may be costs for vendors who avail themselves of the protest procedures. However, those costs would be associated with the administrative requirements for filing a protest and the Commission expects those costs would be minimal. There is no anticipated economic cost to an individual required to comply with the new section as proposed. The new section will have no effect on the state's agricultural, horse breeding, horse training, greyhound training, and greyhound breeding industries.

Comments on the proposal may be submitted on or before April 15, 2005, to Paula C. Flowerday, Executive Secretary for

the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The new section is proposed under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules relating exclusively to horse and greyhound racing; and under Government Code, §2155.076.

The new section implements Government Code, §2155.076.

§303.17. Vendor Protests.

(a) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a contract may formally protest to the Commission's chief fiscal officer. The protest must be in writing and received in the Commission's main office in Austin not later than the 10th day after the date the aggrieved person knows, or should have known, of the occurrence of the action which is protested.

(b) The chief fiscal officer is authorized to settle and resolve the dispute concerning the solicitation or award of a contract. If the protest is not resolved by mutual agreement, the chief fiscal officer shall issue a written determination on the protest.

(c) Not later than the 10th day after receiving notice of the chief fiscal officer's determination, the protesting party may file a written appeal to the executive secretary. The executive secretary's decision on the appeal is final.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 25, 2005.

TRD-200500867
Paula C. Flowerday
Executive Secretary
Texas Racing Commission
Earliest possible date of adoption: April 10, 2005
For further information, please call: (512) 833-6699

SUBCHAPTER D. TEXAS BRED INCENTIVE PROGRAMS

DIVISION 1. GENERAL PROVISIONS

16 TAC §303.83

The Texas Racing Commission proposes an amendment to §303.83, relating to audits, financial statements and performance measures. The amendment clarifies that an official breed registry need submit audited financial statements only with respect to the registry's operation of the Texas Bred Incentive Program.

Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, has determined that for the first five year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing the amendment.

Ms. Flowerday has also determined that for each of the first five years the amendment is in effect the anticipated public benefit will be that the horse and greyhound breed registries will have more flexibility when acquiring audited financial statements for submission to the Commission. There may be fiscal implications for the breed registries who will be obtaining audited financial statements. Because the Commission will not require financial statements on all of a breed registry's operations, the breed registry may have a cost savings. The exact amount of the cost savings cannot be determined at this time, as it will depend on the particular breed registry's operations and the particular audit firm used. The Commission estimates, however, that the savings could be up to $4,000 annually. There is no anticipated economic cost to an individual required to comply with the amendment as proposed. The amendment will have no effect on the state's agricultural, horse training, and greyhound training industries. The amendment may have an effect on the horse and greyhound breeding industries, in that the official breed registries may be able to save money on administrative expenditures, thereby making their operations more efficient.

Comments on the proposal may be submitted on or before April 15, 2005, to Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules relating exclusively to horse and greyhound racing; and §6.08(g), which authorizes the Commission to adopt rules relating to the accounting, audit, and distribution of money set aside for the Texas Bred Incentive Programs.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§303.83. Audits, Financial Statements and Performance Measures.

(a) (No change.)

(b) Not later than June 15 of each year, each breed registry designated by the Act shall submit to the Commission audited financial statements regarding its operation of the Texas Bred Incentive Program for that breed [~~operations~~]. The executive secretary may prescribe the form for the financial statements. In conjunction with the financial statements, each breed registry shall submit to the Commission a schedule of awards payable in a format prescribed by the executive secretary.

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 25, 2005.

TRD-200500868
Paula C. Flowerday
Executive Secretary
Texas Racing Commission
Earliest possible date of adoption: April 10, 2005
For further information, please call: (512) 833-6699

CHAPTER 309. RACETRACK LICENSES AND OPERATIONS

SUBCHAPTER B. OPERATION OF RACETRACKS

DIVISION 2. FACILITIES AND EQUIPMENT

16 TAC §309.124

The Texas Racing Commission proposes an amendment to §309.124, relating to the requirement that racetrack associations provide and maintain a public address system. The amendment eliminates the requirement that there be a public address system in the kennel area of a greyhound racetrack.

Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, has determined that for the first five year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing the amendment.

Ms. Flowerday has also determined that for each of the first five years the amendment is in effect the anticipated public benefit will be that the health of greyhounds at Texas greyhound racetracks will be enhanced since they will not be disrupted by the public address system. There will be fiscal implications for the greyhound racetracks in that they will not be required to install public address systems in the kennel area. The exact amount of savings cannot be determined as it will depend on the size of the kennel area and the type of equipment involved. There is no anticipated economic cost to an individual required to comply with the amendment as proposed. The amendment will have no effect on the state's agricultural, horse breeding, horse training, greyhound training, and greyhound breeding industries.

Comments on the proposal may be submitted on or before April 15, 2005, to Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules relating exclusively to horse and greyhound racing; and §6.06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of racetracks.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§309.124. Public Address System.

An association shall provide and maintain a public address system capable of transmitting announcements to the patrons and , if the association is a horse racing association, to the stable [~~or kennel~~] area.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 25, 2005.

TRD-200500869
Paula C. Flowerday
Executive Secretary
Texas Racing Commission
Earliest possible date of adoption: April 10, 2005
For further information, please call: (512) 833-6699

CHAPTER 315. OFFICIALS AND RULES FOR GREYHOUND RACING
SUBCHAPTER B. ENTRIES AND PRE-RACE PROCEDURES

16 TAC §315.106

The Texas Racing Commission proposes an amendment to §315.106, relating to liability for fees in stake races. When Chapter 315 was last reviewed in 2000, an error was made in the text of this section. This amendment returns the section to the originally intended language.

Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, has determined that for the first five year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing the amendment.

Ms. Flowerday has also determined that for each of the first five years the amendment is in effect the anticipated public benefit will be that the Commission's rules will accurately reflect their regulatory intent. There are no fiscal implications for small or micro-businesses. There is no anticipated economic cost to an individual required to comply with the amendment as proposed. The amendment will have no effect on the state's agricultural, horse breeding, horse training, greyhound training, and greyhound breeding industries.

Comments on the proposal may be submitted on or before April 15, 2005, to Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules relating exclusively to horse and greyhound racing; and §6.06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of racetracks.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§315.106. Liability for Fees in Stake Races [~~Entry Fee~~].

(a) The owner of a greyhound nominated to a stakes race is liable for all nomination, sustaining, and other fees associated with the race. The death of a greyhound, failure to start, or mistake in its entry does not release the owner from liability for the applicable fees. If ownership of the greyhound is transferred after the greyhound is nominated for the race, the new owner is liable for all fees associated with the race that accrue after the date the ownership is transferred. [~~A greyhound that is entered in a purse race shall start in the race, unless the greyhound is declared or scratched.~~]

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 25, 2005.

TRD-200500870
Paula C. Flowerday
Executive Secretary
Texas Racing Commission
Earliest possible date of adoption: April 10, 2005
For further information, please call: (512) 833-6699

TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 107. DENTAL BOARD PROCEDURES
SUBCHAPTER B. PROCEDURES FOR INVESTIGATING COMPLAINTS

22 TAC §107.102

The Texas State Board of Dental Examiners (Board) proposes amendments to 22 TAC Chapter 107, §107.102, concerning procedures in the conduct of investigations. The amendments are proposed to clarify and standardize language, and to improve organization.

The amendments remove from §107.102 subsections (g) - (j). The language contained in those subsections addresses dismissal of cases, and is being relocated to a new §107.103. The Board proposed new §107.103, the repeal of the current §107.103, and a new §107.110 to contain the language currently residing in §107.103 in the February 18, 2005, issue of the *Texas Register* (30 TexReg 800).

The proposed amendments also more accurately reflect that the director of enforcement may only recommend, and not dictate, the manner of disposition of complaints.

There are no other substantive changes to the section.

Bobby D. Schmidt, Executive Director, Texas State Board of Dental Examiners has determined that for each year of the first five-year period the amendments are in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering the amended section.

There is negligible public benefit anticipated as a result of enforcing or administering the amended section.

There will be no impact on large, small or micro-businesses.

There is no anticipated economic cost to persons as a result of enforcing or administering the amended section.

Comments on the proposal may be submitted to Bobby D. Schmidt, M.Ed. Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-1660. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this amended section is published in the *Texas Register*.

The amendments are proposed under Texas Government Code §§2001.021 et seq., Texas Civil Statutes; the Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed amendments affect Title 3, Subtitle D of the Occupations Code and Texas Administrative Code, Title 22, Chapters 101 - 125.

§107.102. Procedures in Conduct of Investigation.

(a) - (c) (No change.)

(d) During the course of an investigation, the complainant shall be given an opportunity to explain or comment on the allegations made in the complaint. At the initiation of the investigation, the respondent shall be provided a copy of the complaint to facilitate a response, unless doing [~~to do~~] so would jeopardize an investigation.

(e) The parties to the complaint shall receive notice of the complaint's status [~~of the complaint~~], at least quarterly, until final disposition of the complaint, unless such notice would jeopardize an investigation.

(f) Upon completion of the investigation, the director of enforcement shall review the case. The director of enforcement may:

(1) recommend dismissal of the complaint;

(2) recommend the case be taken before the State Office of Administrative Hearings;

(3) recommend the case be taken before an informal settlement conference;

(4) recommend that the legal division prepare a proposed board order;

(5) refer the case for review by the board or a committee of the board;

(6) direct further investigation;

(7) refer the case for review by a board member; or,

(8) take other appropriate action or consideration in accordance with SBDE rules and the Dental Practice Act.

(g) The director of enforcement will not make a recommendation in cases involving standard of care issues. Such cases shall be reviewed by one board member, who must be a dentist.

[~~(f) Upon completion of the investigation, the Director of Enforcement shall review the case. The Director of Enforcement may recommend dismissal of the case, refer the case to the State Office of Administrative Hearings, refer the case to an informal settlement conference, request that the legal division prepare a proposed Board Order, direct the case to the Board or a committee of the Board, direct further investigation, request the case be reviewed by a Board member, or other appropriate action or consideration in accordance with Board rules. The Director of Enforcement will not make a recommendation of standard of care matters. Cases involving standard of care matters will be reviewed by two Board members, one of those two must be a dentist.~~]

[~~(g) If the Director of Enforcement recommends dismissal of a case, he or she shall state, with specificity, the reason or reasons for the recommended dismissal. A case recommended for dismissal by the Director of Enforcement shall be reviewed by a member of the Enforcement Committee. If the committee member does not agree with the dismissal, the case will be forwarded to an informal settlement conference. If the committee member agrees that the case should be dismissed the dismissal shall be final.~~]

[~~(h) All jurisdictional cases shall be investigated. No case will be dismissed without appropriate consideration. If a complaint is dismissed, the Board shall notify the complainant within ten days of the date of the Board action. The notice of dismissal must be in writing, include the reason(s) for the dismissal and inform the complainant of the right to appeal the dismissal. An appeal under this section shall be considered a request for reconsideration of the dismissed case.~~]

[~~(i) The Board may hear an appeal in a dismissed case only if:~~]

[~~(1) New information or evidence is presented, the acceptance of such, if taken as true supports the original complaint(s);~~]

[~~(2) The complainant must, in writing, request reconsideration of a dismissed case postmarked no later than twenty days from the date of receipt of the Board's dismissal letter. The complainant(s)~~

~~is presumed to be in receipt of the dismissal letter on the third day after the date on which the dismissal letter is mailed.]~~

~~[(3) A request for reconsideration of a dismissed case(s) shall not be considered by the Board unless it is timely submitted.]~~

~~[(4) A request for reconsideration must contain the requirements specified in this subsection. For purposes of this section, a complainant is deemed to have received the dismissal letter three days from the date of mailing by the Board.]~~

~~[(5) Requests meeting this subsection shall be heard by the Professional Evaluation Committee no later than sixty days after the date the Board receives the request from the complainant requesting reconsideration. This time frame may be extended upon good cause shown by the Board. If the time for reconsideration occurs after this sixty day period, the Board shall notify the complainant(s) in writing.]~~

~~[(6) This subsection does not apply to cases dismissed by the full Board by recommendation from an Informal Settlement Conference panel. All cases dismissed by the full Board may be appealed in accordance with the Government Code.]~~

~~[(j) The Professional Evaluation Committee shall consist of three board members appointed by the President of the Board, one of whom must be a public member. Complaints referred to the Professional Evaluation Committee by the Secretary or designee may be dismissed, referred to an informal settlement conference or returned for further investigation. The Professional Evaluation Committee may also propose an agreed Board Order imposing sanctions. All Board Orders proposed by the Professional Evaluation Committee shall include a statement that the Respondent should not agree to the Order if he or she wants to explain any part of his or her conduct in connection with the complaint.]~~

~~[(1) Meetings of the Professional Evaluation Committee are open meetings as defined by the Open Meetings Act;]~~

~~[(2) Only Professional Evaluation Committee members and SBDE staff may participate in discussions concerning any complaint. The members may review and consider all information in the investigative file.]~~

~~[(3) All cases heard by the Professional Evaluation Committee involving reconsideration of an earlier dismissal by the Board are final.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 25, 2005.

TRD-200500873
Bobby D. Schmidt, M.Ed.
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: April 10, 2005
For further information, please call: (512) 475-0972

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 131. ORGANIZATION AND ADMINISTRATION

SUBCHAPTER F. ADMINISTRATION

22 TAC §131.81

The Texas Board of Professional Engineers proposes amendments to §131.81, relating to Definitions. The proposed amendments add language to define CAC/ABET and Supervision of Engineering Construction.

The Board is proposing to add a definition of CAC/ABET to support other rule changes that include a reference to the Computing Accreditation Commission of the Accreditation Board for Engineering and Technology. Section 1001.407 of the Act refers to supervision of engineering construction and the proposed rule change defines this term.

Lance Kinney, P.E., Director of Licensing for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment will be clarification of the license and registration process.

Mr. Kinney has also determined that there is no additional cost to the agency or to licensees. There is no effect to individuals required to comply with the rule as proposed. There is no effect to small or micro businesses.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Director of Licensing, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own, proceedings, and the regulation of the practice of engineering in this state.

No other statutes, articles or codes are affected by the proposed amendment.

§131.81. Definitions.

In applying the Texas Engineering Practice Act and the board rules, the following definitions shall prevail unless the word or phrase is defined in the text for a particular usage. Singular and masculine terms shall be construed to include plural and feminine terms and vice versa.

(1) ABET--Accreditation Board for Engineering and Technology

(2) Act--The Texas Engineering Practice Act, Chapter 1001, Texas Occupations Code.

(3) Advisory Opinion--A statement of policy issued by the board that provides guidance to the public and regulated community regarding the board's interpretation and application of Chapter 1001, Texas Occupations Code, referred to as the Texas Engineering Practice Act "Act" and/or board rules and that do not have the force and effect of law.

(4) Agency or Board--Texas Board of Professional Engineers.

(5) Applicant--A person applying for a license to practice professional engineering or a firm applying for a certificate of registration to offer or provide professional engineering services.

(6) Application--The forms, information, and fees necessary to obtain a license as a professional engineer or a certificate of registration for a firm.

(7) CAC/ABET -- Computing Accreditation Commission of the Accreditation Board for Engineering and Technology.

(8) [~~(7)~~] Certificate of Registration--The annual certificate issued by the board to a firm offering or providing professional engineering services to the public in Texas.

(9) [~~(8)~~] Complainant--Any party who has filed a complaint with the board against a person or entity subject to the jurisdiction of the board.

(10) [~~(9)~~] Contested case--A proceeding, including but not restricted to rate making and licensing, in which the legal rights, duties, or privileges of a party are to be determined by an agency after an opportunity for adjudicative hearing pursuant to the Administrative Procedure Act, Chapter 2001, Texas Government Code.

(11) [~~(10)~~] Direct supervision--Critical watching, evaluating, and directing of engineering activities with the authority to review, enforce, and control compliance with all engineering design criteria, specifications, and procedures as the work progresses. Direct supervision will consist of an acceptable combination of: exertion of significant control over the engineering work, regular personal presence, reasonable geographic proximity to the location of the performance of the work, and an acceptable employment relationship with the supervised persons. Engineers providing direct supervision of engineering under the Act, §1001.405(f), shall be personally present during such work.

(12) [~~(11)~~] EAC/ABET--Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology.

(13) [~~(12)~~] EAOR number--An engineering advisory opinion request file number assigned by the executive director to a pending advisory opinion in accordance with this chapter.

(14) [~~(13)~~] Engineering--The profession in which a knowledge of the mathematical, physical, engineering, and natural sciences gained by education, experience, and practice is applied with judgment to develop ways to utilize, economically, the materials and forces of nature for the benefit of mankind.

(15) [~~(14)~~] Firm--Any entity that engages or offers to engage in the practice of professional engineering in this state. This includes sole proprietorships, firms, co-partnerships, corporations, partnerships, or joint stock associations.

(16) [~~(15)~~] Good Standing--(License or Registration)--A license or registration that is current, eligible for renewal, and has no outstanding fees or payments.

(17) [~~(16)~~] Gross negligence--Any willful or knowing conduct, or pattern of conduct, which includes but is not limited to conduct that demonstrates a disregard or indifference to the rights, health, safety, welfare, and property of the public or clients. Gross negligence may result in financial loss, injury or damage to life or property, but such results need not occur for the establishment of such conduct.

(18) [~~(17)~~] Incompetence--An act or omission of malpractice which may include but is not limited to recklessness or excessive errors, omissions or failures in the license holder's record of professional practice; or an act or omission in connection with a disability which includes but is not limited to mental or physical disability or addiction to alcohol or drugs as to endanger health, safety and interest of the public by impairing skill and care in the provision of professional services.

(19) [~~(18)~~] License--The legal authority granting the holder to actively practice engineering upon the payment of the annual renewal fee. Also, a certificate issued by the board showing such authority.

(20) [~~(19)~~] License Holder--Any person whose license to practice engineering is current.

(21) [~~(20)~~] Licensure--The granting of an original certificate and license to an individual.

(22) [~~(21)~~] Misconduct--The violation of any provision of the Texas Engineering Practice Act and board rules. A conviction of a felony or misdemeanor that falls under the provisions of Texas Occupations Code, Chapter 53, will also be misconduct under the Texas Engineering Practice Act.

(23) [~~(22)~~] NAFTA--North American Free Trade Agreement. NAFTA is related to the practice and licensure of engineering through mutual recognition of registered/licensed engineers by jurisdictions of Canada, Texas, and the United Mexican States.

(24) [~~(23)~~] NCEES--National Council of Examiners for Engineering and Surveying.

(25) [~~(24)~~] Party--Each person or agency named or admitted as a party to a proceeding under the Administrative Procedure Act.

(26) [~~(25)~~] Person--Any individual, firm, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

(27) [~~(26)~~] Petitioner--Any party requesting the adoption of a rule by the Board.

(28) [~~(27)~~] Pleading--Written allegations filed by parties concerning their respective claims.

(29) [~~(28)~~] Professional engineering--Professional service which may include consultation, investigation, evaluation, planning, designing, or direct supervision of construction, in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works, or projects wherein the public welfare, or the safeguarding of life, health, and property is concerned or involved, when such professional service requires the application of engineering principles and the interpretation of engineering data.

(30) [~~(29)~~] Professional engineering services--Services which must be performed by or under the direct supervision of a licensed engineer and which meet the definition of the practice of engineering as defined in the Act, §1001.003. A service shall be conclusively considered a professional engineering service if it is delineated in that section; other services requiring a professional engineer by contract, or services where the adequate performance of that service requires an engineering education, training, or experience in the application of special knowledge or judgment of the mathematical, physical or engineering sciences to that service shall also be conclusively considered a professional engineering service.

(31) [~~(30)~~] Protestant--Any party opposing an application or petition filed with the Board.

(32) [~~(31)~~] Recognized institution of higher education--An institution of higher education as defined in §61.003, Education Code; or in the United States, an institution recognized by one of the six regional accrediting associations, specifically, the New England Association of Schools and Colleges, the North Central Association Commission on Accreditation and School Improvement, the Northwest Association of Schools and Colleges, the Southern Association of Colleges and Schools, the Western Association of Schools and Colleges, or the Middle States Association of Colleges & Schools; or, outside the

United States, an institution recognized by the Ministry of Education or the officially recognized government education agency of that country.

(33) [~~(32)~~] Respondent--Any party against whom any complaint has been filed with the Board.

(34) [~~(33)~~] Responsible charge--An earlier term synonymous with the term "direct supervision"; the term is still valid and may be used interchangeably with "direct supervision" when necessary.

(35) [~~(34)~~] Responsible supervision--An earlier term synonymous with the term "direct supervision;" the term is still valid and may be used interchangeably with "direct supervision" when necessary.

(36) Supervision of Engineering Construction -- As used in §1001.407 of the Act, includes but is not limited to the periodic observation of materials and completed work to determine general compliance with plans, specifications and design and planning concepts. Supervision of engineering construction does not include the construction means and methods; responsibility for the superintendence of construction processes, site conditions, operations, equipment, personnel; or the maintenance of a safe place to work or any safety in, on or about the site.

(37) [~~(35)~~] TAC/ABET--Technology Accreditation Commission of the Accreditation Board for Engineering and Technology.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 25, 2005.

TRD-200500874
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Earliest possible date of adoption: April 10, 2005
For further information, please call: (512) 440-7723

CHAPTER 137. COMPLIANCE AND PROFESSIONALISM

SUBCHAPTER A. INDIVIDUAL AND ENGINEER COMPLIANCE

22 TAC §137.17

The Texas Board of Professional Engineers proposes amendments to §137.17, relating to Continuing Education. The proposed amendments add language to allow editing and formally reviewing published materials to count for Continuing Education credits and revising the credits for this activity.

The proposed rule change permits engineers to earn Professional Development Hours (PDH) for editing and formally reviewing published materials. Authoring, editing, and formally reviewing published materials earn one PDH per hour spent on the activity.

Lance Kinney, P.E., Director of Licensing for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect the public benefit anticipated as a result of enforcing the proposed amendment will be clarification of the requirements and enforcement process for the Continuing Education Program.

Mr. Kinney has determined that there is no additional cost to the agency or to licensees. There is no effect to individuals required to comply with the rule as proposed. There is no effect to small or micro businesses.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Director of Licensing, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own, proceedings, and the regulation of the practice of engineering in this state.

No other statutes, articles or codes are affected by the proposed amendment.

§137.17. Continuing Education Program.

(a) Each license holder shall meet the Continuing Education Program (CEP) requirements for professional development as a condition for license renewal.

(b) Terms used in this section are defined as follows:

(1) Professional Development Hour (PDH)--A contact hour (clock hour) of CEP activity. PDH is the basic unit for CEP reporting.

(2) Continuing Education Unit (CEU)--Unit of credit customarily used for continuing education courses. One continuing education unit equals 10 hours of class in an approved continuing education course.

(3) College/Unit Semester/Quarter Hour--Credit for course in ABET-approved program or other related college course.

(4) Course/Activity--Any qualifying course or activity with a clear purpose and objective which will maintain, improve, or expand the skills and knowledge relevant to the license holder's field of practice.

(c) Every license holder is required to obtain 15 PDH units during the renewal period year.

(d) A minimum of 1 PDH per renewal period must be in the area of professional ethics, roles and responsibilities of professional engineering, or review of the Texas Engineering Practice Act and Board Rules.

(e) If a license holder exceeds the annual requirement in any renewal period, a maximum of 15 PDH units may be carried forward into the subsequent renewal period. Professional Development Hours must not be anticipated and cannot be used for more than one renewal period.

(f) PDH units may be earned as follows:

(1) Successful completion or auditing of college credit courses.

(2) Successful completion of continuing education courses, either offered by a professional or trade organization, university or college, or offered in-house by a corporation, other business entity, professional or technical societies, associations, agencies, or organizations, or other group.

(3) Successful completion of correspondence, on-line, televised, videotaped, and other short courses/tutorials.

(4) Presenting or attending seminars, in-house courses, workshops, or professional or technical presentations made at meetings, conventions, or conferences sponsored by a corporation, other business entity, professional or technical societies, associations, agencies, or organizations, or other group.

(5) Teaching or instructing as listed in paragraphs (1) through (4) of this subsection [above].

(6) Authoring, editing, or formally reviewing published papers, articles, books, or accepted licensing examination items.

(7) Active participation in professional or technical societies, associations, agencies, or organizations, including:

(A) Serving as an elected or appointed official;

(B) Serving on a committee of the organization;

(C) Serving in other official positions.

(8) Patents Issued.

(9) Engaging in self-directed study.

(g) All activities described in §137.17(f) of this title shall be relevant to the practice of a technical profession and may include technical, ethical, or managerial content.

(h) The conversion of other units of credit to PDH units is as follows:

(1) 1 College or unit semester hour--15 PDH

(2) 1 College or unit quarter hour--10 PDH

(3) 1 Continuing Education Unit--10 PDH

(4) 1 Hour of professional development in course work, seminars, or professional or technical presentations made at meetings, conventions, or conferences--1 PDH

(5) 1 Hour of professional development through self-directed study (Not to exceed 5 PDH)--1 PDH

(6) One hour of authoring, editing, or formally reviewing [Each] published papers, articles [paper, article], or books [book]--1 [10] PDH

(7) Active participation in professional or technical society, association, agency, or organization (Not to exceed 5 PDH per organization)--1 PDH

(8) Each patent issued--15 PDH

(9) Other activities shall be credited at 1 PDH for each hour of participation in the activity.

(i) Determination of Credit

(1) The Board shall be the final authority with respect to whether a course or activity meets the requirements of these rules.

(2) The Board shall not pre-approve or endorse any CEP activities. It is the responsibility of each license holder to assure that all PDH credits claimed meet CEP requirements.

(3) Credit for college or community college approved courses will be based upon course credit established by the college.

(4) Credit for seminars and workshops will be based on one PDH unit for each hour of attendance. Attendance at programs presented at professional and/or technical society meetings will earn PDH units for the actual time of each program.

(5) Credit for self-directed study will be based on one PDH unit for each hour of study and is not to exceed 5 PDH per renewal period. Credit determination for self-directed study is the responsibility of the license holder and subject to review as required by the board.

(6) Credit determination for activities described in subsection (h)(4) of this section is the responsibility of the license holder and subject to review as required by the board.

(7) Credit for activity described in subsection (h)(7) of this section requires that a license holder serve as an officer of the organization, actively participate in a committee of the organization, or serve in other official positions. PDH credits are not earned until the end of each year of service is completed.

(8) Teaching credit is valid for teaching a course or seminar for the first time only.

(j) The license holder is responsible for maintaining records to be used to support credits claimed. Records required include, but are not limited to:

(1) a log showing the type of activity claimed, sponsoring organization, location, duration, instructor's or speaker's name, and PDH credits earned; and

(2) attendance verification records in the form of completion certificates or other documents supporting evidence of attendance.

(k) The license holder must submit certification that CEP requirements have been satisfied for that renewal year with the renewal application and fee.

(l) CEP records for each license holder must be maintained for a period of three years by the license holder.

(m) CEP records for each license holder are subject to audit by the board or its authorized representative.

(1) Copies must be furnished, if requested, to the Board or its authorized representative for audit verification purposes.

(2) If upon auditing a license holder, the Board finds that the activities cited do not fall within the bounds of educational, technical, ethical, or professional management activities related to the practice of engineering; the board may require the license holder to acquire additional PDH as needed to fulfill the minimum CEP requirements.

(n) A license holder may be exempt from the professional development educational requirements for one of the following reasons listed in paragraphs (1)-(4) of this subsection:

(1) New license holders by way of examination shall be exempt for their first renewal period.

(2) A license holder serving on active duty and deployed outside the United States, its possessions and territories, in or for the military service of the United States for a period of time exceeding one hundred twenty (120) consecutive days in a year shall be exempt from obtaining the professional development hours required during that year.

(3) License holders experiencing physical disability, illness, or other extenuating circumstances as reviewed and approved by the board may be exempt. Supporting documentation must be furnished to the board.

(4) License holders who list their status as "Inactive" and who further certify that they are no longer receiving any remuneration from providing professional engineering services in Texas shall be exempt from the professional development hours required.

(o) A license holder may bring an inactive license to active status by obtaining all delinquent PDH units. However, if the total number required to become current exceeds 30 units, then 30 units shall be the maximum number required.

(p) Noncompliance:

(1) If a [~~an~~] license holder does not certify that CEP requirements have been met for a renewal period, the license shall be considered expired and subject to late fees and penalties.

(2) Failure to comply with CEP reporting requirements as listed in this section is a violation of Board rules and shall be subject to sanctions.

(3) A determination by audit that CEP requirements have been falsely reported shall be considered to be misconduct and will subject the license holder to disciplinary action.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 25, 2005.

TRD-200500875
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Earliest possible date of adoption: April 10, 2005
For further information, please call: (512) 440-7723

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 461. GENERAL RULINGS

22 TAC §461.11

The Texas State Board of Examiners of Psychologists proposes amendments to §461.11, Continuing Education. These amendments are being proposed in order to clarify continuing education documentation requirements.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to make the rule simpler. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§461.11. Continuing Education.

(a) - (b) (No change.)

(c) Permitted activities.

(1) - (3) (No change.)

(4) Continuing education hours must have been obtained during the 12 months prior to the renewal period for which they are submitted. If the hours were obtained during the license renewal month and are not needed for compliance for that year, they may be submitted the following year to meet that year's continuing education requirements. A continuing education certificate may not be considered towards fulfilling the continuing education requirements for more than one renewal year.

(d) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 18, 2005.

TRD-200500779
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: April 10, 2005
For further information, please call: (512) 305-7700

CHAPTER 465. RULES OF PRACTICE

22 TAC §465.9

The Texas State Board of Examiners of Psychologists proposes amendments to §465.9, Competency. These amendments are being proposed in order to impose on licensees the duty to recognize where conflicts or problems would prevent the timely completion of services and suggest the appropriate remedial measures when the interruption occurs.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to make the rule simpler. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make

all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§465.9. Competency.

(a) - (i) (No change.)

(j) Licensees refrain from initiating or continuing to undertake an activity when they know or should know that there is a substantial likelihood that personal problems or conflicts will prevent them from performing their work- related activities or producing a psychological end product in a competent and timely manner. When licensees become aware of such conflicts, they must immediately take appropriate measures, such as obtaining professional consultation or assistance in order to determine whether they should limit, suspend, or terminate the engagement in accordance with Board Rule 465.21.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 18, 2005.

TRD-200500780
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: April 10, 2005
For further information, please call: (512) 305-7700

22 TAC §465.11

The Texas State Board of Examiners of Psychologists proposes amendments to §465.11, Informed Consent/Describing Psychological Services Competency. These amendments are being proposed in order to impose on licensees the duty to inform clients of interruptions in their services that prevent timely and competent completion.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to make the rule simpler. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§465.11. Informed Consent/Describing Psychological Services.

(a) - (e) (No change.)

(f) At any time that a licensee knows or should know that he or she may be called on to perform potentially conflicting roles (such as marital counselor to husband and wife, and then witness for one party in a divorce proceeding), the licensee explains the potential conflict to all affected parties and adjusts or withdraws from all professional services in accordance with Board rules and applicable state and federal law. Further, licensees who encounter personal problems or conflicts as described in Rule 465.9(i) that will prevent them from performing their work-related activities in a competent and timely manner must inform their clients of the personal problem or conflict and discuss appropriate termination and/or referral to insure that the services are timely completed.

(g) - (h) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 18, 2005.

TRD-200500781
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: April 10, 2005
For further information, please call: (512) 305-7700

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS RELATING TO THE REQUIREMENTS OF LICENSURE

22 TAC §535.2

The Texas Real Estate Commission (TREC) proposes amendments to §535.2, concerning Broker's Responsibility.

The amendments add new subsections (d), (e), and (f) to §535.2 to define the minimum level of service that a consumer may expect to receive from a licensee who negotiates a real estate transaction on behalf of the consumer in an agency relationship. Proposed subsection (d) of the amendments further defines the term "negotiate" used in subsection (b) of the existing rule which provides that a "broker is obligated under a listing contract to negotiate the best possible transaction for the principal, the person the broker has agreed to represent." Under proposed subsection (d), in negotiating for a client in an agency relationship, a licensee would be required to accept and present to the client offers and counter-offers related to buying, selling or leasing property; assist in developing, communicating and presenting offers, counter-offers and notices; and answer questions relating to offers, counter-offers and notices.

Proposed subsection (e) provides clarification regarding §1101.652(b)(22) of the Occupations Code, which prohibits a licensee from negotiating or attempting to negotiate a real estate transaction with a person with knowledge that the person

is a party to an outstanding exclusive agency agreement with another broker in connection with the transaction, and §1101.652(b)(27), which prohibits a licensee from aiding or abetting in a violation of the Act. Proposed subsection (e) clarifies that a licensee may not instruct a licensee who represents another client to negotiate with a represented client directly and restates the existing statutory provisions.

Proposed subsection (f) provides an exception to negotiation for delivery of an offer or counter-offer. Delivery of an offer or counter-offer is not considered negotiation if the party's broker consents to the delivery and the other broker does not attempt to discuss the terms of the offer or counter-offer with the other party.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the amended section. There is similarly no impact on local or state employment.

Ms. DeHay has determined that for each year of the first five years the amendments as proposed are in effect the public benefit anticipated as a result of enforcing the amended section will be clarification to consumers of the minimum services they can expect to receive from a real estate broker who represents a client in an agency relationship in Texas. While there may be an economic cost to licensed small businesses, micro businesses or licensed persons that have developed fee for service business models which provide multiple listing access or advertising services only under exclusive agency agreements, such impact is difficult to calculate as brokers charge a range of fees for brokerage services. Those licensees whose business models are inconsistent with the proposed amendments may need to reassess their business models to comply with the proposed amendments. Those licensees will need to include the three services, at a minimum, in their menu of services if the licensee will be acting pursuant to an agency relationship. Any additional costs of providing the services may be offset by charging the individual client for the services provided. A licensee, however, may establish any type of relationship with a client, including a non-agency relationship, and the parties may agree on any method of compensation or fee structure they wish. Further, mere advertising for a flat rate fee that is not contingent on the completion of the purchase, sale, lease or rental of the property advertised does not require a real estate license in Texas. Thus, the proposed amendments do not establish or require that licensees must charge set fees or rates.

There is no difference in the economic impact to small business, micro businesses, or large businesses.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the section. There is similarly no impact on local or state employment.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.2. Broker's Responsibility.

(a) - (c) (No change.)

(d) In negotiating for his or her principal a broker shall provide the following services:

(1) accept and present to the principal offers and counter-offers to buy, sell, or lease the principal's property or property the principal seeks to buy or lease;

(2) assist the principal in developing, communicating, and presenting offers, counter-offers, and notices that relate to the offers and counter-offers; and

(3) answer the principal's questions relating to offers, counter-offers, and notices.

(e) Under §1101.652(b)(22) of the Act a broker may not negotiate or attempt to negotiate the sale or lease of property with a principal with knowledge that the principal is a party to an outstanding written contract that grants exclusive agency to another broker. Under §1101.652(b)(27) of the Act, a broker may not aid, abet, or conspire with another to circumvent the Act. A broker who represents a principal under a listing contract that grants an exclusive agency to the broker may not instruct or authorize another broker who represents another party in the transaction to negotiate directly with the principal.

(f) When a broker delivers an offer or counter-offer to another broker, the broker is not negotiating or attempting to negotiate with a principal he or she does not represent by delivering a copy of the offer or counter-offer to the principal he or she does not represent so long as the broker representing the principal consents to the delivery and the broker who makes the delivery does not discuss or attempt to discuss the terms or conditions of the offer or counter-offer with the principal he or she does not represent.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 23, 2005.

TRD-200500832
Loretta DeHay
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: April 10, 2005
For further information, please call: (512) 465-3900

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 7. MEMORANDA OF UNDERSTANDING

30 TAC §7.105

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the

Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Commission on Environmental Quality (commission) proposes the repeal of §7.105.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED REPEAL

In 1998, the General Land Office and the commission entered into a memorandum of understanding regarding the governance and funding of the Galveston Bay Estuary Program. The memorandum of understanding is currently incorporated into commission rules. At the time that the agencies entered into the memorandum of understanding, the 75th Legislature funded the Galveston Bay Estuary Program through the General Land Office's Coastal Protection Fund; however, the program was administered by the commission. The following biennium, the 76th Legislature funded the Galveston Bay Estuary Program directly through the commission, and that remains the case today. Additionally, that legislature clarified the roles and responsibilities of both agencies for estuary programs and designated the commission as the lead entity by enacting Texas Water Code (TWC), §§5.601 - 5.609.

SECTION DISCUSSION

Section 7.105, Adoption of Memoranda of Understanding between the Texas General Land Office and the Texas Natural Resource Conservation Commission, is an administrative agreement between the commission and the General Land Office. The memorandum of understanding has been cancelled by a mutual agreement consistent with the memorandum of understanding between the General Land Office and the commission. The rulemaking would repeal obsolete text that remains in the Texas Administrative Code.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst with the Strategic Planning and Grants Management Section, determined that for the first five-year period that the proposed repeal is in effect there will be no significant fiscal impacts for units of state and local government as a result of administration or enforcement of the proposed repeal. The proposal would repeal §7.105, which is obsolete text that remains in the Texas Administrative Code and is no longer needed.

PUBLIC BENEFIT AND COSTS

Ms. Chamness also determined that for each year of the first five years that the proposed repeal is in effect, the public benefit anticipated from enforcement of and compliance with the proposed repeal will be the elimination of unnecessary rules contained in Chapter 7.

There will be no fiscal implications to persons and businesses as a result of the administration and enforcement of the proposal because the elimination of unnecessary rules is an administrative action that has no fiscal impact to any individual or business.

SMALL AND MICRO-BUSINESS ASSESSMENT

No adverse economic effects are anticipated to any small or micro-businesses as a result of implementing the proposed repeal because the elimination of unnecessary rules is an administrative action that has no fiscal impact to any small or micro-businesses. There are no known small or micro-businesses that would be adversely affected by the proposed repeal.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed repeal does not adversely affect a local economy in a material way for the first five years that the proposed repeal is in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed repeal in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed repeal is not subject to §2001.0225 because it does not meet the criteria for a "major environmental rule" as defined in that statute.

A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The specific intent of the proposed rulemaking is to repeal obsolete text that remains in the Texas Administrative Code. Therefore, it is not anticipated that the proposed repeal will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The commission concludes that the proposed repeal does do not meet the definition of a major environmental rule.

Furthermore, even if the proposed repeal did meet the definition of a major environmental rule, the proposed repeal is not subject to Texas Government Code, §2001.0225, because it does not meet any of the four applicable requirements specified in §2001.0225(a). Texas Government Code, §2001.0225(a), applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the proposed repeal does not meet any of these requirements. First, there are no applicable federal standards that this rulemaking would address. Second, the proposed repeal does not exceed an express requirement of state law but instead implements the statutory requirement of TWC, §§5.601 - 5.609, which designates the commission as the lead agency for estuary program implementation in the state. Third, there is no delegation agreement that would be exceeded by the proposed repeal because none relates to this subject matter area. Fourth, the commission proposes the repeal under TWC, §5.104, which authorizes the commission to enter into a memorandum of understanding with any other state agency, and not solely under the commission's general powers.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed repeal and performed an assessment of whether the proposed repeal constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed rulemaking is to repeal obsolete text that remains in the Texas Administrative Code. The proposed repeal would substantially advance this stated purpose.

Promulgation and enforcement of the proposed repeal would be neither a statutory nor a constitutional taking of private real property because the proposed repeal does not affect real property.

In particular, there are no burdens imposed on private real property and the proposed repeal would eliminate an unnecessary and obsolete rule. Because the regulation does not affect real property, it does not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, the proposed repeal will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, nor will it affect any action/authorization identified in §505.11. Therefore, the proposed repeal is not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, Texas Register Team, Office of Legal Services, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Project Number 2004-088-007-AD. Comments must be received by 5:00 p.m., April 11, 2005. For further information or questions concerning this proposal, please contact Frank Fuller, Chief Engineer's Office, at (512) 239-5796.

STATUTORY AUTHORITY

The repeal is proposed under TWC, §5.104, which authorizes the commission to enter into a memorandum of understanding with any other state agency; and TWC, §§5.601 - 5.609, which designates the commission as the lead agency for estuary program implementation in the state.

The proposed repeal implements TWC, §§5.601 - 5.609.

§7.105. Adoption of Memoranda of Understanding between the Texas General Land Office and the Texas Natural Resource Conservation Commission.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 25, 2005.

TRD-200500866
Kevin McCalla
Director, General Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: April 10, 2005
For further information, please call: (512) 239-5017

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CHAPTER 213. EDWARDS AQUIFER

The Texas Commission on Environmental Quality (commission) proposes amendments to §§213.1, 213.3, 213.4, 213.12, 213.20 - 213.22, 213.24, and 213.27.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Chapter 213 regulates certain activities having the potential for polluting the Edwards Aquifer and hydrologically connected surface streams to protect existing and potential uses of groundwater and maintain Texas Surface Water Quality Standards. The activities subject to regulation are those that pose a threat to water quality within mapped geographic areas designated as the recharge, transition, and contributing zones to the Edwards Aquifer on official maps adopted by the commission.

The recharge zone is the area where the rock units of the Edwards Aquifer occur at the surface. Water and potential pollutants of concern can move directly into the aquifer through cracks, fissures, caves, and other openings with little to no natural barriers to flow or mitigation of contaminants.

The transition zone is designated in areas where the Edwards Aquifer is in transition from water table conditions to confined (artesian) conditions. In the transition zone, faults with significant vertical movement occur near the southeastern boundary of the recharge zone, cutting through and shifting the overlying confining rock formations. These faults can conduct contaminants downward very quickly to the artesian portion of the aquifer. The artesian aquifer is highly transmissive and many public water supply wells are completed in this zone. Some of these faults are in close proximity to public water supply wells and travel times for contaminants are short.

Finally, the areas designated as contributing zone are immediately upstream of the recharge zone where storm water runoff from rainfall flows downstream to the recharge zone. Some areas within the transition zone are topographically higher than the recharge zone and storm water runoff will flow back from the transition zone onto the recharge zone. These areas are designated as contributing zone within the transition zone.

The regulatory boundaries used in the Edwards Aquifer program were established by the commission and its predecessors using the information available at the time the maps were adopted. The primary techniques were interpretation of aerial photography, utilization of existing maps of other research organizations, and limited physical inspection or ground truthing. The boundary is interpreted from information containing varying degrees of detail, and the result is not a detailed depiction of actual field conditions at a site-specific scale of significant recharge features, which may contribute to direct recharge. More detailed mapping efforts, refined geologic concepts, and hydrologic testing in recent years have enabled more accurate delineation of the recharge zone, affording better and more comprehensive water quality protection.

The boundaries of the regulatory zones for the Edwards Aquifer have undergone many changes as new information has been made available. Whole counties have been added (1985, 1990) and partially deleted (1986). The lines within counties have been modified with the transition zone being added (1986, 1990) and recharge zone being modified (1974, 1984, 1986, 1990, 1999).

A buffer zone was established in 1970, deleted in 1974, and reestablished as the contributing zone in 1999.

The agency's official maps delineate regulatory zones for the surface area subject to regulation under Chapter 213, are referenced in the rules and are therefore subject to rulemaking. The proposed mapping changes are in response to both a petition received by the commission from the Barton Springs/Edwards Aquifer Conservation District (BSEACD) to redraw portions of the recharge zone boundaries in southern Travis and northern Hays Counties and to the commission's review of new geologic mapping work of the Edwards Aquifer rock units in southern Hays and Comal Counties by the United States Geological Survey (USGS) and of the New Braunfels area by the University of Texas Bureau of Economic Geology (UTBEG). Appendix A1, which appears in the Tables and Graphics section of this issue of the *Texas Register*, is a location map illustrating the counties and 7.5 Minute Quadrangles affected by this proposed rulemaking.

Barton Springs/Edwards Aquifer Conservation District Petition and Commission Response

The commission received a petition on December 13, 2002, from the BSEACD requesting that the commission revise its regulations in Chapter 213, Edwards Aquifer, to redraw portions of the recharge zone boundaries on the agency's official maps. The petitioner requested changes to the boundary that would add approximately 8.8 square miles to the existing 89.33 square miles of recharge zone for the Barton Springs segment of the Edwards Aquifer in Travis and northern Hays Counties. BSEACD requested that the commission designate approximately 4.6 square miles of the existing contributing zone area as recharge zone in total spread over five locations on the western boundary of the recharge zone. BSEACD also requested that the commission designate approximately 4.2 square miles of the existing transition zone area as recharge zone in total spread over six locations along the eastern boundary of the recharge zone. Lastly, BSEACD requested that the commission designate approximately 0.3 square miles of the existing recharge zone area as transition zone.

On February 5, 2003, the commission considered the petition and instructed the executive director to examine the issues in the petition and to initiate rulemaking based on further staff review and field verification of boundary delineations. The agency staff reviewed the petition and supporting information, and conducted field visits to evaluate the petitioner's interpretation of the geology in the areas indicated on the map materials submitted with the petition. Multiple field visits were made to cover all of the locations in the petition. Many of the visits were in the company of affected landowners and/or their representatives and consultants. On many occasions, a representative of the petitioner was also present during the field investigation phase.

The petitioner requested that the commission change the designation of areas on the western boundary of the recharge zone from contributing zone to recharge zone based on the inclusion of the Walnut Formation as part of the Edwards Group. This unit was mapped by the USGS in the San Antonio area as the Basal Nodular Member of the Kainer Formation, and isolated examples of groundwater flow through solution features have been documented in this rock unit. The Basal Nodular Member is characterized by the USGS as a low permeability unit except in surface occurrences where the unit has been modified by karst processes. In the geological literature, there is a difference of opinion regarding the southern extent of the Walnut Formation mapped in northern Travis and Williamson Counties, the northern extent of the Basal Nodular Member mapped in the San Antonio area, and the transitional nature of the relationships of the units. The commission, after review of the literature and field investigations, believes the transition of these units occurs near the Hays-Comal County line. In Hays and Travis Counties, the lower boundary of the Edwards rock units comprising the recharge zone is considered to be the contact between the Edwards Group and the Walnut Formation. In Comal County, the lower boundary of the Edwards rock units comprising the recharge zone is considered to be the contact between the Basal Nodular Member of the Kainer Formation and the Glen Rose Formation.

In the petition area, the contact between the Edwards Group and the Walnut Formation is distinct. Agency staff observed no evidence of solution features in the Walnut Formation, and concluded that the Walnut Formation serves as an aquaclude sealing the base of the overlying isolated outcrops of Edwards limestone throughout the western portion of the petition area. This sealing effect results in water seeping out from the overlying Edwards rock units and discharging to nearby streams rather than recharging the main body of the Edwards Aquifer. Consequently, this proposal does not change the designations of these areas from contributing zone to recharge zone.

Along the eastern portion of the recharge zone, the petitioner requested that the commission change the designation of six areas from transition zone to recharge zone. The request to change five of the areas was based on recent mapping work by the USGS that identified previously unmapped outcrops of the Georgetown Limestone in the petition area. Agency staff confirmed the presence of Georgetown Limestone in four of these areas, and the commission is proposing changes from transition zone to either recharge zone or contributing zone within the transition zone for these areas. One area mapped as an outcrop of Georgetown Limestone lies below the outflow of Barton Springs, and the proposal does not change the designation of this area.

In the sixth area, the petitioner requested a change from transition zone to recharge zone because local surface water drainage patterns suggest that storm water runoff flows back onto the recharge zone. Agency staff determined that the area is highly developed and drainage patterns have been drastically altered. At present, the drainage is captured by large runoff control structures constructed by the Texas Department of Transportation and directed away from the recharge zone. The commission does not propose to change the designation of this area.

The petitioner also requested a small area on the eastern boundary be re-designated from recharge zone to transition zone where the outcrop of Georgetown Limestone is hydraulically below a modified recharge feature known as Antioch Cave in Onion Creek. The petitioner contends that no significant recharge is taking place below Antioch Cave. The commission agrees and is proposing this change based on the lack of observable recharge features occurring downstream of Antioch Cave.

In response to the petitioner, the proposed rulemaking changes the designation of portions of four areas in northern Hays and southern Travis Counties, totaling 4.29 square miles. A change is proposed of 2.89 square miles, from transition zone to contributing zone within the transition zone. In those same four areas, the proposed rulemaking changes the designation of 1.08 square miles from transition zone to recharge zone. The commission further proposes to change the designation of 0.32 square miles from recharge zone to transition zone. Proposed

changes to regulatory zone boundaries and proposed changes to the Edwards Aquifer recharge zone maps incorporating the changes are illustrated in the Tables and Graphics section of this issue of the *Texas Register* for the Oak Hill 7.5 Minute Quadrangle, Appendix A2 and A3, respectively; for the Mountain City 7.5 Minute Quadrangle, Appendix A6 and A7, respectively; and for the Buda 7.5 Minute Quadrangle, Appendix A8 and A9, respectively. The proposed Edwards Aquifer recharge zone maps depicted on full-size 7.5 Minute Quadrangles incorporating the changes may be viewed on the agency's Web site at *www.tceq.state.tx.us* or at the commission headquarters in Austin located at 12100 Park 35 Circle; at the San Antonio Regional Office, 14250 Judson Road; and the Austin Regional Office, 1921 Cedar Bend Drive, Suite 150.

Examination of Other Areas in Hays and Comal Counties

More detailed geologic mapping of Edwards Aquifer rock units has become available in recent years. The USGS published maps showing hydrogeologic subdivisions of the Edwards Aquifer outcrop for Comal County in 1994, for Hays County in 1994, for Bexar County in 1995, and for Northeastern Hays and Southwestern Travis Counties in 1996. The UTBEG published a geologic map of the New Braunfels, Texas, 30 X 60 Minute Quadrangle in 2000. For the areas in southern Hays and Comal Counties outside the petition area, agency staff reviewed new geologic mapping, previous mapping work, and geologic literature concerning the area and conducted field visits to evaluate the geology to determine if the official maps should be revised based on new information and to provide for regulatory consistency.

Five areas along the eastern boundary of the recharge zone in southern Hays and Comal Counties were reviewed in the vicinity of the Blanco River, on the San Marcos North and Mountain City 7.5 Minute Quadrangles; the City of San Marcos, on the San Marcos North 7.5 Minute Quadrangle; the community of Hunter, on the Hunter and San Marcos South 7.5 Minute Quadrangles; the City of New Braunfels, on the Hunter 7.5 Minute Quadrangle; and the community of Garden Ridge, on the Bat Cave 7.5 Minute Quadrangle. The USGS and UTBEG maps indicated extensive faulting in the areas that was confirmed by agency staff's field investigation. Map review and field investigation in these areas identified outcrops of the Georgetown Limestone, previously undifferentiated or mapped as other rock units in several areas. The surface topography in the area is such that storm water from high areas of non-Edwards rock units at higher elevations drains to areas within the recharge zone at lower elevations. The commission is proposing changes from transition zone to recharge zone for outcrops of Georgetown Limestone and contributing zone within the transition zone for the areas that drain storm water to areas of recharge zone.

Proposed changes to regulatory zone boundaries and proposed changes to the official Edwards Aquifer recharge zone maps incorporating the changes are illustrated in the Tables and Graphics section of this issue of the *Texas Register* for the San Marcos North 7.5 Minute Quadrangle, Appendix A14 and A15, for the Mountain City 7.5 Minute Quadrangle, Appendix A6 and A7, for the Hunter and San Marcos South 7.5 Minute Quadrangles, Appendix A20 and A21 and A22 and A23, respectively; and for the Bat Cave 7.5 Minute Quadrangle, Appendix A24 and A25. The proposed Edwards Aquifer recharge zone maps depicted on full-size 7.5 Minute Quadrangles incorporating the changes may be viewed on the agency's Web site at *www.tceq.state.tx.us* or at the commission headquarters in Austin located at 12100 Park 35 Circle; at the San Antonio Regional Office, 14250 Judson Road; and the Austin Regional Office, 1921 Cedar Bend Drive, Suite 150.

Areas along the western boundary of the recharge zone in southern Hays and Comal Counties were reviewed. The areas were those in the vicinity of the Guadalupe River basin in Comal County depicted on the Smithson Valley, Sattler, and Devil's Backbone 7.5 Minute Quadrangles, the area near the Village of Wimberley depicted on the Wimberley 7.5 Minute Quadrangle, and the area near the community of Hays City depicted on the Driftwood 7.5 Minute Quadrangle. Map review and field investigation in the Guadalupe River basin area identified outcrops of the Kainer Formation including the Basal Nodular Member previously undifferentiated or mapped as other rock units on the Smithson Valley and Sattler 7.5 Minute Quadrangles. Map review and field investigation in the Hays City area identified outcrops of the Edwards Group previously undifferentiated or mapped as other rock units on the Driftwood 7.5 Minute Quadrangle. The commission is proposing changes from contributing zone to recharge zone for these areas. A few areas previously included in the mapped recharge zone in the Guadalupe River basin and Wimberley areas were found to be hilltop, island outcrops of the Kainer Formation or the Walnut Formation draining to and surrounded by the Glen Rose Formation. The commission is proposing changes from recharge zone to contributing zone for these areas.

Proposed changes to regulatory zone boundaries and proposed changes to the official Edwards Aquifer recharge zone maps incorporating the changes are illustrated in the Tables and Graphics Section of this issue of the *Texas Register* for the Smithson Valley, Sattler, and Devil's Backbone 7.5 Minute Quadrangles, Appendix A16 and A17, A18 and A19, and A10 and A11, respectively; for the Wimberley 7.5 Minute Quadrangle, Appendix A12 and A13, and for the Driftwood 7.5 Minute Quadrangle, Appendix A4 and A5. The proposed Edwards Aquifer recharge zone maps depicted on full-size 7.5 Minute Quadrangles incorporating the changes may be viewed on the agency's Web site at *www.tceq.state.tx.us* or at the commission headquarters in Austin located at 12100 Park 35 Circle; at the San Antonio Regional Office, 14250 Judson Road; and the Austin Regional Office, 1921 Cedar Bend Drive, Suite 150.

The proposed rulemaking changes the designation of portions of eight areas in southern Hays and Comal Counties totaling 29.14 square miles. Areas re-designated from transition zone to recharge zone totaled 5.34 square miles. Areas re-designated from transition zone to contributing zone within the transition zone totaled 18.92 square miles. No areas were re-designated from recharge zone to transition zone. Areas re-designated from recharge zone to contributing zone within the transition zone totaled 1.74 square miles. Areas re-designated from recharge zone to contributing zone totaled 1.41 square miles. Areas re-designated from contributing zone to recharge zone totaled 1.73 square miles.

Map Corrections Related to 1999 Rule Amendments Affecting Bexar County

During previous rule revisions (effective June 1, 1999) that amended the official Edward Aquifer recharge zone maps in Bexar, Medina, Uvalde, and Kinney Counties, the Camp Bullis 7.5 Minute Quadrangle in northern Bexar County was inadvertently omitted from the list of quadrangle maps to be affected by the re-designation of areas as contributing zone. As a result, an open area designated as recharge zone remains depicted on

the Camp Bullis quadrangle map. This rulemaking proposes to modify the Camp Bullis quadrangle to change the designation of this area from recharge zone to contributing zone for an area of 0.3 square miles. This change and the resulting effect on the area included in the contributing zone are illustrated in the Tables and Graphics Section of this issue of the *Texas Register* on Appendix A26 and A27, respectively.

Regulatory Effects of Zone Designation Change

Transition Zone to Recharge Zone

In those areas currently designated as transition zone, but proposed for re-designation to recharge zone, there would be no change to the existing requirements to address aboveground or underground storage tanks under §213.5(e) and (f). Newly regulated activities could include construction of buildings; utility stations; utility lines; roads; highways; or railroads and clearing, excavation, or other activities which alter or disturb the topographic or existing storm water runoff characteristics of a site. All new regulated activities would be subject to agency approval through a water pollution abatement plan (WPAP) under §213.5(b) and/or an organized sewage collection system (SCS) plan under §213.5(c).

Prior to commencement of construction, a WPAP will need to be submitted to and approved by the executive director and the plan must contain information on the site location, a geologic assessment, and a technical report that details the best management practices (BMPs) that will be used during and after construction to address storm water runoff and other activities that have the potential to contaminate the Edwards Aquifer. There would also be an ongoing obligation to maintain BMPs during and after construction. However, currently this area is subject to regulations on construction and some post-construction storm water discharges subject to Texas Pollutant Discharge Elimination System statewide general permits, and the re-designation would require plans to be approved by the executive director prior to commencement of construction rather than prior to the notification of intent under the general permit.

Before commencement of construction on an SCS, an SCS plan would have to be submitted to and approved by the executive director and would contain special construction requirements to protect the aquifer in the system plans and specifications, a geologic assessment, and a technical report. Sensitive features discovered during construction would have to be addressed for activities under either an approved WPAP or SCS plan. As an ongoing obligation, all new and existing SCSs must be tested to determine types and locations of structural damage and defects that would allow exfiltration of effluent to occur. All leakage must be contained immediately and repairs should be repaired as soon as possible, but at least within one year of discovery.

There would be additional activities prohibited in the re-designated areas under §213.8(a)(2), (4), and (6) and new concentrated animal feeding operations, use of sewage holding tanks as part of an SCS (not including lift stations), and new industrial and municipal wastewater discharges would be prohibited. This would be added to the list of already prohibited activities over the areas currently designated as transition zone for land disposal of certain hazardous wastes, waste disposal wells, and certain municipal solid waste landfills.

Currently, all discharges, other than industrial wastewater discharges, which enter the main stem or a tributary of Segment 1428 of the Colorado River, or Segment 1427, main stem Onion Creek, or a tributary of Onion Creek, must still comply with 30 TAC §311.43, Effluent Requirements for All Tributaries of Segment 1428 of the Colorado River and Segment 1427, Onion Creek, and Its Tributaries, of the Colorado River Basin, and to §311.44, Disinfection. Also, the effluent limitation under §213.6(c) applies in areas where discharges flow back onto the recharge zone from the transition zone. With the re-designation to recharge zone, new and increased wastewater discharges would need to meet wastewater treatment and disposal system requirements under §213.6(a) and (b) as discussed in the section on contributing zone to recharge zone. On-site sewage facilities regulated under 30 TAC Chapter 285, On-Site Sewage Facilities, must meet the special provision contained in that chapter for new facilities installed in the recharge zone and additional provisions may be required by the authorized agent. As part of the WPAP, a written statement is required from the authorized agent that the site is suitable for the use of private sewage facilities or that identifies those sites that are not suitable.

Changes from transition zone to recharge zone are proposed for the Oak Hill, Mountain City, Buda, and San Marcos North 7.5 Minute Quadrangles.

Transition Zone to Contributing Zone Within the Transition Zone

For those areas currently designated as transition zone, but proposed for change to contributing zone within the transition zone, all of the provisions of the rules that apply to activities in the transition zone will remain in effect including prohibited activities under §213.8(b) and (c). Regulated activities will include construction of buildings; utility stations; utility lines; construction of and storage of static hydrocarbons and hazardous substances in underground and aboveground storage tank systems (including temporary storage using an aboveground storage tank); construction on roads, highways, or railroads; and clearing, excavation, or other activities which alter or disturb the topographic or existing storm water runoff characteristics of a site.

Currently, this area is subject to regulations on construction and some post construction storm water discharges under the Texas Pollutant Discharge Elimination System statewide general permits and the re-designation would require individual plans to be approved by the executive director prior to commencement of construction rather than prior to the notification of intent process under the general permit. Prior to commencement of construction, a contributing zone plan will need to be submitted to and approved by the executive director for all regulated activities that will disturb five or more acres or are part of a common plan for development that will disturb five or more acres. The plan must contain information on the site location and a technical report which details the BMPs that will be used during and after construction to address storm water runoff and other activities that have the potential to pollute surface streams which recharge the Edwards Aquifer. There would be an ongoing obligation to maintain BMPs both during and after construction.

During construction, if a sensitive feature is discovered in the path of a sewage line, construction must cease near the feature and the location and extent of those features must be assessed by a geologist and reported to the appropriate regional office in writing within two working days of discovery feature. An engineered plan that will allow the line to be constructed in a manner that will maintain the structural integrity of the line must be submitted and approved by the executive director.

While not a new requirement, with mapped re-designation it will make it easier to determine if an area is subject to the requirements under §213.6(c) regarding discharges upstream from the recharge zone. All new or increased discharges of wastewater discharges, other than industrial, within zero to five miles upstream from the recharge zone, at a minimum, will be required to achieve the level of effluent treatment specified in §213.6(c)(1). All new or increased wastewater discharges, other than industrial, more than five miles but within ten miles upstream from the recharge zone and any other discharges that the agency determines may affect the Edwards Aquifer, at a minimum, must achieve the level of effluent treatment for 2N based on a 30-day average as set out in 30 TAC §309.4, Table 1, Effluent Limitations for Domestic Wastewater Treatment Plants. More stringent treatment or more frequent monitoring may be required on a case-by-case basis.

This rulemaking is proposing that all new wastewater treatment and discharge requirements under §213.6(a) and (b) would apply to areas designated as contributing zone within the transition zone. The regulatory impact of this change is described in the discussion on re-designation from contributing zone to recharge zone.

Changes from transition zone to contributing zone within the transition zone are proposed for the Oak Hill, Mountain City, Buda, San Marcos North, San Marcos South, Hunter, and Bat Cave 7.5 Minute Quadrangles.

Contributing Zone to Recharge Zone

In those areas currently designated as contributing zone, but proposed to be changed to recharge zone, all new developments, regardless of the size of acreage disturbed would be subject to agency approval through either a WPAP, an organized SCS plan, an aboveground storage tank facility plan, and/or an underground storage tank facility plan, depending on the type of development. Newly regulated activities would include construction of and storage of static hydrocarbons and hazardous substances in underground and aboveground storage tank systems (including temporary storage using an aboveground storage tank) and installation and maintenance of organized SCSs. There are no prohibited activities under Chapter 213 within the areas currently designated as contributing zone. With re-designation to recharge zone, prohibitions under §213.8(a) would apply for the following activities: waste disposal into underground injection wells, new concentrated animal feeding operations, land disposal of Class I wastes, the use of sewage holding tanks as part of an organized SCS, new Type I municipal solid waste disposal facility operations, and new municipal and industrial wastewater discharges that would create additional pollutant loadings. In addition, for applications submitted on or after September 1, 2001, injection wells that transect or terminate in the Edwards Aquifer are prohibited.

The current contributing zone plan requirements for the areas subject to regulations are identical to the WPAP requirements for BMPs that will be used during and after construction to address storm water runoff and other activities that have the potential to contaminate the Edwards Aquifer, including an ongoing obligation to maintain BMPs both during and after construction. However, there are several differences that will be required for recharge zone development including a geologic assessment as part of the plan and incorporating a storm water pollution prevention plan into the WPAP.

Before commencement of construction on an SCS, an SCS plan would have to be submitted and approved by the executive director as described in the section on transition zone to recharge zone. Existing discharges would need to meet wastewater treatment and disposal system requirements under §213.6. New wastewater treatment and discharge requirements under §213.6(a) and (b) would apply to the newly designated recharge zone areas. New industrial and municipal wastewater discharges that would create additional pollutant loading are prohibited on the recharge zone, and increases in existing discharges that would increase or add new pollutant loads are also prohibited. Existing wastewater permits may be renewed for the same discharge volumes and with the same conditions and authorizations specified in the permit; however, permits may not be renewed if the facility becomes noncompliant. New land application wastewater treatment plants must be designed, constructed, and operated so that there are no bypasses of the facilities or any discharges of untreated or partially treated wastewater. Land application systems that rely on percolation for wastewater disposal are prohibited. Wastewater disposal systems utilizing land application methods may be considered on a case-by-case basis; however, at a minimum, those systems must attain secondary treatment as defined in Chapter 309, Effluent Limitations. Existing land application permits may be renewed for the same discharge volumes and with the same conditions and authorizations specified in the permit depending on the facility's compliance with all applicable regulations.

On-site sewage facilities regulated under Chapter 285 must meet the special provision contained in that chapter for new facilities installed in the recharge zone, and additional provisions may be required by the authorized agent. As part of the WPAP, a written statement is required from the authorized agent that the site is suitable for the use of private sewage facilities or that identifies those are that are not suitable.

Currently, aboveground storage tank systems in the contributing zone are regulated by both statewide rules and under Chapter 213. To protect the aquifer, current regulations require temporary storage of static hydrocarbons, and hazardous substances in an aboveground storage tank facility (≥250 gallons) require spill containment and 150-foot setback from the five-year flood plain. Permanent aboveground storage tank facilities (≤500 gallons cumulative storage) must be constructed and spills removed using the standards contained in §213.5(e)(1) for the recharge zone. Additional requirements, due to re-designation, will be the submittal to and the approval by the executive director prior to commencement of construction of an aboveground storage tank facility plan, which must include a site location map, geologic assessment, and technical report, unless this information is part of an approved WPAP. There are some exceptions or exemptions for regulation of aboveground storage tanks contained in §213.5(e)(4).

Currently, underground storage tank systems in the contributing zone are regulated by statewide rules under 30 TAC Chapter 334, Underground and Aboveground Storage Tanks, and there are secondary containment requirements for underground storage tanks in Bexar and Comal Counties under 30 TAC Chapter 214, Secondary Containment Requirements for Underground Storage Tank Systems Located Over Certain Aquifers. Due to re-designation, standards for new or replacement underground storage tanks for the storage of hydrocarbons and hazardous

substances will require a double-walled or an equivalent system with methods for detecting leaks in the inside wall of a double-walled system. The leak detection system must provide continuous monitoring and must be capable of immediately alerting the system's owner of possible leakages. In addition, any new underground storage tanks that do not incorporate a method for tertiary containment must be located a minimum horizontal distance of 150 feet from any domestic, industrial, or irrigation well; public water supply well without a sanitary control easement; or other sensitive feature as determined under the geologic assessment at the time of construction or replacement. An underground storage tank facility plan must be submitted to and approved by the executive director prior to commencement of construction. The plan must contain a site location map, a geologic assessment, and a technical report in accordance with §213.5(d). A technical report for a WPAP satisfies the plan requirement, provided it properly addresses the proposed underground storage tank facility.

Changes from contributing zone to recharge zone are proposed for the Driftwood, Devil's Backbone, Smithson Valley, and Sattler 7.5 Minute Quadrangles.

Recharge Zone to Contributing Zone

In those areas currently designated as recharge zone, but proposed for change to contributing zone, new regulated activities would have to meet the less stringent requirements for the contributing zone. Only regulated activities that will disturb five or more acres or are part of a common plan for development that will disturb five or more acres would trigger the need for a contributing zone plan; however, the BMP requirements during and after construction are unchanged from the recharge zone. No activities are specifically prohibited under Chapter 213 in the contributing zone. Prior to commencement of construction, a contributing zone plan will need to be submitted to and approved by the executive director for all regulated activities.

Regulated activities are very similar to the recharge zone; however, additional requirements beyond statewide rules are not required for organized SCSs and specific construction standards for underground storage tanks are not required beyond statewide rules, except for Bexar and Comal County requirements under Chapter 214. Requirements for temporary aboveground storage tank systems are the same as the recharge zone, and permanent aboveground storage tank systems must meet the same construction design standards used in the recharge zone. No geologic assessment is required for plans submitted to the executive director for approval prior to commencement of construction.

The provisions for wastewater treatment and disposal under §213.6(a) and (b) would no longer apply, including the prohibition of new or increased wastewater discharges that would create additional pollutant loadings on the recharge zone. However, requirements under §213.6(c) for wastewater discharge upstream from the recharge zone would apply. All new or increased discharges of treated wastewater, other than industrial wastewater discharges, within zero to five miles upstream from the recharge zone, at a minimum, are required to achieve an effluent treatment of five milligrams per liter of carbonaceous biochemical oxygen demand, based on a 30-day average; five milligrams per liter of total suspended solids, based on a 30-day average; two milligrams per liter of ammonia nitrogen, based on a 30-day average; and one milligram per liter of phosphorus, based on a 30-day average. All new or increased discharges, other than industrial wastewater discharges, more than five miles but within ten miles upstream from the recharge zone and any other discharges that the agency determines may affect the Edwards Aquifer, at a minimum, must achieve the level of effluent treatment for 2N based on a 30-day average as set out in §309.4. More stringent treatment or more frequent monitoring may be required on a case-by-case basis. All discharges, other than industrial wastewater discharges, more than five miles upstream from the recharge zone, which enter the main stem or a tributary of Segment 1428 of the Colorado River, or Segment 1427, main stem Onion Creek, or a tributary of Onion Creek, must comply with §311.43 and §311.44. More stringent treatment or more frequent monitoring may be required on a case-by-case basis. Any existing permitted industrial wastewater discharges within zero to ten miles upstream of the recharge zone must, at all times, discharge effluent in accordance with permitted limits. Any application for new industrial wastewater discharge permits for facilities zero to ten miles upstream of the recharge zone will be considered on a case-by-case basis, in accordance with appropriate discharge limits applicable to that industrial activity and with consideration of its proximity to the recharge zone. On-site sewage facilities regulated under Chapter 285 would no longer have to meet the special provision contained in that chapter for new facilities installed in the recharge zone; however, additional provisions may still be required by the authorized agent.

Changes from recharge zone to contributing zone are proposed for the Devil's Backbone, Wimberley, Smithson Valley, Sattler, and Camp Bullis 7.5 Minute Quadrangles.

Recharge Zone to Contributing Zone Within the Transition Zone

In those areas currently designated as recharge zone, but proposed for change to contributing zone within the transition zone, new regulated activities would have to meet the less stringent requirements. However, activities and the regulations for them in both the transition zone and the contributing zone would still apply. There would be no change in requirements for either aboveground or underground storage tank systems from the requirement in the recharge zone. A contributing zone plan (rather than a WPAP) would be required only for regulated activities that will disturb five or more acres or are part of a common plan for development and no geologic assessment would be required; however, the BMP requirements during and after construction are unchanged from the recharge zone.

No SCS plan would be required; however, if during construction, a sensitive feature is discovered in the path of a sewage line, construction must cease near the feature and the location and extent of those features must be assessed by a geologist and reported to the appropriate regional office in writing within two working days of the discovery feature. An engineered plan that will allow the line to be constructed in a manner that will maintain the structural integrity of the line must be submitted and approved by the executive director.

The provisions for wastewater treatment and disposal under §213.6(a) and (b) would still apply if proposed changes to §213.21(c) are adopted and would include the prohibition of new or increased wastewater discharges that would create additional pollutant loadings on the recharge zone. On-site sewage facilities regulated under Chapter 285 would no longer have to meet the special provision contained in that chapter for new facilities installed in the recharge zone; however, additional provisions may still be required by the authorized agent.

The number of prohibited activities under §213.8 would be reduced and there would no longer be a prohibition on new concentrated animal feeding operations regulated under 30 TAC Chapter 321, Control of Certain Activities by Rule, or the use of a sewage holding tank as part of an organized SCS.

Changes from recharge zone to contributing zone within the transition zone are proposed for the Mountain City and Buda 7.5 Minute Quadrangles.

Recharge Zone to Transition Zone

In those areas currently designated as recharge zone, but proposed for change to transition zone, new regulated activities would have to meet the less stringent requirements for the transition zone. The types of land development regulated would be limited to the requirements for aboveground and underground storage tank systems currently in place for the recharge zone. Prohibited activities would be reduced and would no longer contain a prohibition on new concentrated animal feeding operations regulated under Chapter 321, or the use of a sewage holding tank as part of an organized SCS.

No WPAP or SCS plans would be required; however, statewide requirements for BMPs to control storm water discharges during and after construction under the Texas Pollutant Discharge Elimination System statewide general permits would still apply. If wastewater discharges are not upstream of the recharge zone, the wastewater treatment and disposal system requirements under §213.6(c) would not apply; however, there are additional provisions for discharges into the main stream or tributary of the Colorado River and Onion Creek as described in the section on transition zone to contributing zone within the transition zone. On-site sewage facilities regulated under Chapter 285 would no longer have to meet the special provision contained in that chapter for new facilities installed in the recharge zone; however, additional provisions may still be required by the authorized agent.

Changes from recharge zone to transition zone are proposed for the Buda 7.5 Minute Quadrangle.

SECTION BY SECTION DISCUSSION

Administrative and grammatical changes are proposed throughout the sections to bring the existing rule language into agreement with guidance provided in the *Texas Legislative Council Drafting Manual*, October 2002.

Proposed rule language will correct inaccurate rule citations; specify locations where official maps identifying the Edwards Aquifer recharge, contributing, and transition zones are maintained; rephrase for readability; and correct the agency's name. The proposal specifies the effective dates of map changes. Wastewater discharge provisions under §213.6(a) and (b) are proposed to be extended to areas designated as contributing zone within the transition zone. The commission specifically requests comments on §213.4(a)(4) and §213.21(c) regarding when mapped changes and the resulting regulatory requirements should take effect on developments in progress on the effective date of the map change.

Subchapter A: Edwards Aquifer in Medina, Bexar, Comal, Kinney, Uvalde, Hays, Travis, and Williamson Counties

Proposed changes to §213.1(3), Purpose, update the reference to the current procedures that an applicant or a person affected may use to file a motion to overturn a decision by the executive director under 30 TAC §50.139(a), (b), and (d) - (g).

Changes to the definitions for "Recharge zone" and "Transition zone" under §213.3, Definitions, are proposed to eliminate confusion among the regulated community as to which maps apply to the Chapter 213 requirements. Groundwater conservation districts in the area have mapped the recharge zone for their own purposes, and these maps may not coincide with the areas regulated by the commission under Chapter 213. The language is proposed to be revised to indicate that regulated areas are those areas identified on official maps located in the agency's central office and in the appropriate regional office. The definition of "Feedlot/concentrated animal feeding operation" has been changed to conform with existing rules. The definition of "Groundwater conservation district" has been changed to conform with Texas Water Code (TWC), Chapter 36.

The commission is also proposing changes to the official maps referenced under §213.3(27), "Recharge zone" and (36), "Transition zone" on the Oak Hill, Driftwood, Mountain City, Buda, Devil's Backbone, Wimberley, San Marcos North, San Marcos South, Smithson Valley, Sattler, Hunter, and Bat Cave 7.5 Minute Topographic Quadrangles in Comal, Hays, and Travis Counties and on the Camp Bullis 7.5 Minute Topographic Quadrangles in Bexar County. The scale of the maps precludes their publication in the *Texas Register*; however, illustrative maps showing the proposed changes to the official maps are shown in Appendices A1 - A27 which appear in the Tables and Graphics section of this issue of the *Texas Register*. Detailed maps are available for public inspection on the agency's Web site and at the commission's Austin and San Antonio regional offices and central office, respectively located at 1321 Cedar Bend Drive, Suite 150, Austin, Texas, (512) 339-2929; 14250 Judson Road, San Antonio, Texas, (210) 490-3096; and 12100 Park 35 Circle, Building F, Room 2202, (512) 239-4506. The proposed map changes are described in the BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES section of this rulemaking preamble.

Proposed changes to §213.4(a)(4), Application Processing and Approval, address projects in progress when recharge and transition zone maps are revised by setting a date for all mapped changes. For areas designated as recharge zone or transition zone on official maps prior to the effective date of the change, and for which this designation did not change, all Edwards Aquifer protection plans submitted to the executive director, on or after the effective date, will be reviewed under all the provisions of the subchapter in effect on the date the plan is submitted. For areas designated as recharge zone or transition zone on official maps on the effective date of the change, regulated activities will be considered to have commenced construction and will be regulated under the provisions of this chapter that were in effect at the time the plan was approved by the executive director if, on the effective date of the rules adopting the map changes, all federal, state, and local approvals or permits required to begin physical construction have been obtained and if either on-site construction directly related to the development has begun or construction commences within six months of the mapped changes. Regulated activities in areas designated as transition zones on official maps prior to the effective date of changes and designated as recharge zones on the date the maps go into effect, will be regulated as transition zone activities if, on the effective date, all federal, state, and local approvals or permits required to begin physical construction have been obtained, and if either on-site construction directly related to the development has begun or construction commences within six months of the effective date of the changes.

Proposed changes to §213.12, Application Fees, revise the name of the agency from the Texas Natural Resource Conservation Commission to the Texas Commission on Environmental Quality.

Subchapter B: Contributing Zone to the Edwards Aquifer in Medina, Bexar, Comal, Kinney, Uvalde, Hays, Travis, and Williamson Counties

The commission proposes two changes to §213.20, Purpose. Subsection (b) has been updated to reflect the delegation of the permitting program under the National Pollutant Discharge Elimination System program from the United States Environmental Protection Agency (EPA) to the commission. Proposed changes to subsection (c) update the cross-reference to current procedures that an applicant or a person affected may use to file a motion to overturn a decision by the executive director under §50.139(a), (b), and (d) - (g).

Section 213.21(c), Applicability and Person or Entity Required to Apply, is proposed to be revised to delete the specific references to paragraphs under §213.3 to avoid confusion as new definitions are added to that section of the rules that result in a renumbering of the existing paragraphs. The requirements for regulated activities in the contributing zone within the transition zone have been expanded to require that sewer lines that bridge caverns or sensitive recharge features be constructed in a manner that will maintain the structural integrity of the line. The cross-referenced rules currently require that, when caverns or sensitive features are encountered during construction, the location and extent of those features must be assessed by a geologist and must be reported to the appropriate regional office in writing within two working days of discovery. Notification and inspection of the sewer line must comply with the requirements under §213.5(f). Corrections of section titles are also proposed; however, the specific cross-reference numbers remain unchanged.

Also, under §213.21(c) the commission is proposing that wastewater treatment and discharge requirements in §213.6(a) and (b) be applied to all areas designated as contributing zone within the transition zone. The contributing zone in the transition zone is located along the eastern boundary of the recharge zone and is characterized by elevated topography that allows direct wastewater discharges to streams to flow back to the recharge zone. Current rules under §213.6(c) would allow for effluent that meets certain standards to be discharged directly to the streams and would allow subsurface disposal of effluent based upon percolation in the contributing zone within the transition zone. Due to the unique geology of the contributing zone in the transition zone, these discharge limitations are not adequately protective of Edwards Aquifer water quality. The eastern recharge zone boundary is characterized by significant and often intense faulting. This faulting provides both additional avenues of infiltration and increased permeability and flow that is not present on the western recharge zone boundary. This eastern recharge zone boundary area is also at the transition to the artesian or main body of the Edwards Aquifer where most of the public water supply wells are located. Dye tracer studies have shown that groundwater travel times in this area are on the order of days to weeks to drinking water receptor wells and springs. As a result of this change, new industrial and municipal wastewater discharges that would create additional pollutant loading would be prohibited and increases in existing discharges that would increase or add new pollutant loading are also prohibited. Existing wastewater permits could be renewed for the same discharge volumes and with the same conditions and authorizations specified in the permit; however, permits may not be renewed if the facility becomes noncompliant. New land application wastewater treatment plants must be designed, constructed, and operated so that there are no bypasses of the facilities or any discharges of untreated or partially treated wastewater. Land application systems that rely on percolation for wastewater disposal are prohibited. Wastewater disposal systems utilizing land application methods may be considered on a case-by-case basis; however, at a minimum, those systems must attain secondary treatment as defined in Chapter 309. Existing land application permits could be renewed for the same discharge volumes and with the same conditions and authorizations specified in the permit depending on the facility's compliance with all applicable regulations.

Section 213.21(f) is proposed to be revised from specifying the effective date for the entire Subchapter B to addressing the applicability of Subchapter B rules to projects in progress when new areas are added to the contributing zone or to the contributing zone within the transition zone. For areas designated as contributing zone or contributing zone within the transition zone on official maps prior to the effective date of this rule change, and for which this designation did not change, all plans submitted to the executive director will be reviewed under all the provisions of Subchapter B in effect on the date the plan is submitted. For projects that were re-designated from another regulatory zone under Subchapter A to either contributing zone or contributing zone within the transition zone under Subchapter B, on the effective date of these rules, the regulated activities will be considered to have commenced construction and will be regulated under the provisions of this chapter that were in effect at the time the plan was approved by the executive director if, on the effective date, all federal, state, and local approvals or permits required to begin physical construction have been obtained, and if either on-site construction directly related to the development has begun or construction commences within six months of the effective date of these rules.

Section 213.21(h) is proposed to be deleted to avoid confusion between the initial effective date of Subchapter B and the effective date of regulations to new areas added to the contributing zone or to the contributing zone within the transition zone.

The commission is proposing several changes to §213.22, Definitions. While the definition of "Contributing zone" is unchanged, the illustrations, Figure 1a: §213.22. Contributing Zone (Southern Part) for the Edwards Aquifer and Figure 1b: §213.22. Contributing Zone (Northern Part) for the Edwards Aquifer, have been revised to reflect proposed changes to the recharge zone and to the contributing zone within the transition zone. The proposed new Figure 1 and Figure 2 appear in the Tables and Graphics section of this issue of the *Texas Register*. As discussed previously in the SECTION BY SECTION DISCUSSION explanation of §213.3, detailed maps are available for public inspection on the agency's Web site and at the agency's Austin and San Antonio regional offices and central office.

Figure: 30 TAC Chapter 213--Preamble

Proposed changes to §213.22(3) delete the specific reference to paragraphs under §213.3 to avoid confusion, as new definitions are added to that section which could result in a renumbering of the existing paragraphs. The general description of areas where the contributing zone within the transition zone can occur is proposed to be revised to reflect the geographic directions of the proposed additions in Comal, Hays, and Travis Counties.

Proposed changes to §213.22(4) and (5) and §213.24, Technical Report, update the rules to reflect the delegation of the EPA's National Pollutant Discharge Elimination System program to the commission as the Texas Pollutant Discharge Elimination System program.

Proposed changes to §213.27, Contributing Zone Plan Application and Exception Fees, revise the name of the agency from the Texas Natural Resource Conservation Commission to the Texas Commission on Environmental Quality.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeffrey Horvath, Analyst, Strategic Planning and Grants Management Section, determined that, for the first five-year period that the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or for other units of state or local government. However, fiscal implications are anticipated for owners or developers of land in several small areas in Comal, Hays, and Travis Counties as a result of the enforcement and administration of the proposed rule changes for the first five years that the rules are in effect.

The proposed amendments would redraw portions of the Edwards Aquifer recharge zone boundaries. In particular, areas currently designated as transition zone or contributing zone would be re-designated as areas in the recharge zone or as areas in the contributing zone within the transition zone. These proposed changes will have the effect of increasing regulatory requirements for many development activities in 29.96 square miles of land in Hays, Travis, and Comal Counties. At the same time, for 3.77 square miles of land in these same counties and Bexar County, areas will be re-designated from recharge zone to contributing zone, recharge zone to contributing zone within the transition zone, or recharge zone to transition zone, resulting in less stringent requirements for regulated activities.

The proposed changes are expected to result in an increase in land development costs for approximately 29.96 square miles of land. Additional costs are expected for preparing environmental assessments and engineering plans, fees for agency review of required plans, and the costs associated with construction and management practices that meet the requirements of the proposed rules.

The proposed rulemaking may result in an increase in compliance inspections, Edwards Aquifer protection plan applications, and requests for technical assistance from the agency's Edwards Aquifer protection program staff. However, it is anticipated that any additional program costs will be offset through the collection of fee revenue. Revenue is currently derived from fees assessed for the processing of plans for the construction and maintenance of projects to protect the Edwards Aquifer. Fees are levied for each application, amendment, exception, or time extension requested. The plans for which fees may be imposed are: 1) WPAPss; 2) plans for SCSs; and 3) plans for hydrocarbon storage facilities or hazardous substance storage facilities.

There are no direct fiscal implications anticipated for local governments except those units of local government that are responsible for projects involving regulated activities subject to the provisions of these rules. The costs or cost savings for these local governments will be similar to the costs for other, non-governmental entities.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years that the proposed rules are in effect, the public benefit anticipated will be the reduction or prevention of the degradation of the water quality of the Edwards Aquifer, resulting in the protection of public water supplies and the reduction of the risk to human health and safety from the effects of developments in urban, suburban, and rural areas on water quality. The proposed rules are also expected to preserve aquatic and related biological resources and maintain the quality of public recreational resources.

Costs are anticipated for owners and developers of land in the areas proposed to be re-designated as part of the recharge zone, or the contributing zone within the transition zone.

Owners and developers of land in the areas proposed to be re-designated as part of the recharge zone would be affected because developments, regardless of geographic size or type, would be subject to agency approval through an Edwards Aquifer protection plan. Protective measures would be more extensive because the activity would now be considered to be in direct contact with the aquifer.

Additional costs would be incurred by landowners for permitting, platting, and developing the land. New developments in areas re-designated as recharge zone would be subject to an agency-approved WPAP and/or an organized SCS plan, and would require a geologic assessment of the site. Prohibition of new industrial and municipal wastewater discharges would apply.

Owners and developers of land in the areas proposed to be re-designated as contributing zone within the transition zone would still be subject to transition zone prohibitions and agency approval of underground and aboveground petroleum storage tank plans. In addition, they would be required to submit a contributing zone plan for approval to develop five or more acres. They would also be required to meet additional requirements such as notice of intent to commence construction, notice of discovery and assessments of caverns and sensitive features, and approval of methods to protect the Edwards Aquifer water quality from pollution migration during construction of sewer lines. Abandoned wells will be required to be plugged. Prohibition of new industrial and municipal wastewater discharges that would create additional pollutant loadings would apply to both existing and newly designated areas of the contributing zone within the transition zone.

Effects of Zone Designation Change

Transition Zone to Recharge Zone

In those areas currently designated as transition zone, but proposed for re-designation to recharge zone, there would be no change to the existing requirements to address aboveground or underground storage tanks. Newly regulated activities include construction of buildings, utility stations, utility lines, roads, highways, or railroads and clearing, excavation, or other activities which alter or disturb the topographic or existing storm water runoff characteristics of a site. All new, regulated activities would be subject to agency approval through a WPAP and/or an organized SCS plan. Prior to commencement of construction, a WPAP must be submitted to the agency for approval. The plan must contain information on the site location, a geologic assessment, and a technical report which details the BMPs that will be used during and after construction to address storm water runoff and other activities that have the potential to contaminate the Edwards Aquifer. There would be an ongoing obligation to maintain BMPs both during and after construction.

An SCS plan would have to be submitted to the agency before beginning construction on an organized SCS. The plan would have to contain special construction requirements to protect the aquifer, a geologic assessment, and a technical report. As an ongoing obligation, all new and existing SCSs must be tested to determine types and locations of structural damage and defects that would allow exfiltration of effluent to occur. All leakage must be contained immediately and repairs should be repaired as soon as possible, but at least within one year of discovery. Sensitive features discovered during construction would have to be addressed for activities under either an approved WPAP or SCS plan.

There would be additional activities prohibited in the re-designated areas including new concentrated animal feeding operations, the use of sewage holding tanks as part of an organized SCS (not including lift stations), and new industrial and municipal wastewater discharges.

With the re-designation to recharge zone, new and increased wastewater discharges would need to meet wastewater treatment and disposal system requirements. For on-site sewage facilities, a written statement would be required from the authorized agent that the site is suitable for the use of private sewage facilities or that identifies those are that are not suitable.

Costs

The costs of preparing a geologic assessment may vary from $800 to $8,000, depending on the size and characteristics of the site. The costs of preparing a WPAP are estimated to be between $3,000 to $10,000. Fees collected by the agency for the review and approval of each plan are estimated to range from $1,000 - $5,000, depending on the size of the site and the nature of the activity.

Application fees for SCS plans will be based on the total number of linear feet of all lines for which approval is sought. The fee is $.50 per linear foot, with a minimum fee of $500 and a maximum fee of $5,000. There will also be costs associated with testing the lines once they are put into use. Every five years, existing SCSs must be tested to determine types and location of structural damage and defects that would allow exfiltration to occur. The costs associated with this testing will vary greatly depending the method of testing, the size of the system and how much line needs to be tested, and the necessary maintenance and repair as a result of the testing. At this time, agency staff are not aware of any existing SCSs over the proposed recharge zone. Any future systems over the recharge zone may experience testing costs ranging from about $2,000 for a small system up to several million dollars for testing, maintenance, and repair of major city systems.

There is a large range of BMPs used during and after construction for a particular regulated activity and therefore costs associated with design and installation of BMPs could range from $2,000 to as much as $100,000. A vegetated filter strip using existing grassy areas to treat a small area may be relatively inexpensive to construct, whereas a large water quality pond to treat a large drainage area can be very costly to build. Any areas within the jurisdiction of the City of Austin will already have to meet requirements for permanent BMPs to comply with the City of Austin regulations.

Transition Zone to Contributing Zone Within the Transition Zone

For those areas currently designated as transition zone, but proposed for change to contributing zone within the transition zone, all of the provisions of the rules that currently apply to activities in the transition zone will remain in effect. Regulated activities will include the construction of: buildings; utility stations; utility lines; underground and aboveground storage tank systems (including temporary storage using an aboveground storage tank); roads; highways; railroads; and clearing, excavation, or other activities which alter or disturb the topographic or existing storm water runoff characteristics of a site.

A contributing zone plan will need to be submitted to the agency for approval prior to commencement of construction for all regulated activities that will disturb five or more acres or are part of a common plan for development that will disturb five or more acres. The plan must contain information on the site location, and a technical report that details the BMPs that will be used during and after construction to address storm water runoff and other activities that have the potential to pollute surface streams which recharge the Edwards Aquifer. There would be an ongoing obligation to maintain BMPs both during and after construction.

During construction, if a sensitive feature is discovered in the path of a sewage line, construction must cease near the feature and the location and extent of those features must be assessed by a geologist and reported to the appropriate regional office in writing within two working days. An engineered plan that will allow the line to be constructed in a manner that will maintain the structural integrity of the line must be submitted and approved by the executive director.

There would be additional activities prohibited in the re-designated areas including new industrial and municipal wastewater discharges that would create additional pollutant loadings.

Costs

The costs associated with development over the contributing zone are much lower compared to the recharge zone. No geologic assessment is required, and the fee for contributing zone plan approval is $250 regardless of the size and characteristics of the site. The costs associated with preparing the contributing zone plans are estimated to be between $1,000 to $3,000.

The areas re-designated as recharge zone or contributing zone within the transition zone will have to meet the requirements pertaining to permanent BMPs. The estimated costs associated with the design and installation of BMPs will range from $2,000 to as much as $100,000. Any areas within the jurisdiction of the City of Austin will already have to meet requirements for permanent BMPs to comply with the City of Austin regulations. Projects in the new contributing zone area will not have to meet these requirements if the project is less than five acres or not part of a larger plan of development that will disturb five or more acres.

Contributing Zone to Recharge Zone

In those areas currently designated as contributing zone, but proposed to be changed to recharge zone, all new developments, regardless of the size of acreage would be subject to agency approval through either a WPAP, an SCS plan, an aboveground storage tank facility plan, and/or an underground storage tank facility plan, depending on the type of development. Newly regulated activities would include the storage of static hydrocarbons and hazardous substances in underground and aboveground storage tank systems (including temporary storage using an aboveground storage tank) and installation and maintenance of organized SCSs. With re-designation to recharge zone, prohibitions would apply for the following activities: waste disposal into underground injection wells, new

concentrated animal feeding operations, land disposal of Class I wastes, the use of sewage holding tanks as part of an SCS, new Type I municipal solid waste disposal facilities operations, and new municipal and industrial wastewater discharges that would create additional pollutant loadings. In addition, for applications submitted on or after September 1, 2001, injection wells that transect or terminate in the Edwards Aquifer are prohibited. Existing discharges would need to meet wastewater treatment and disposal system requirements.

The currently required contributing zone plan requirements are identical to the WPAP requirements for BMPs that will be used during and after construction to address storm water runoff and other activities that have the potential to contaminate the Edwards Aquifer, including an ongoing obligation to maintain BMPs both during and after construction. However, for recharge zone development, a geologic assessment must be included as part of the plan and incorporated into the WPAP.

Before commencement of construction on an organized SCS, an SCS plan would have to be submitted and new wastewater treatment and discharge requirements would apply. For on-site sewage facilities, a written statement would be required from the authorized agent that the site is suitable or not suitable for the use of private sewage facilities.

Due to re-designation, there will be additional requirements prior to commencement of construction of an aboveground storage tank facility. Plans submitted to the agency for review and approval must include a site location map, geologic assessment, and technical report, unless this information is part of an approved WPAP.

Due to re-designation, standards for new or replacement underground storage tanks for the storage of hydrocarbons and hazardous substances will require a double-walled or an equivalent system with methods for detecting leaks in the inside wall of a double-walled system. The leak detection system must provide continuous monitoring and must be capable of immediately alerting the system's owner of possible leakages. In addition, any new underground storage tanks that do not incorporate a method for tertiary containment must be located a minimum horizontal distance of 150 feet from any domestic, industrial, or irrigation well, public water supply well without a sanitary control easement, or other sensitive feature as determined under the geologic assessment at the time of construction or replacement. An underground storage tank facility plan must be submitted to and approved by the executive director prior to commencement of construction. The plan must contain a site location map, a geologic assessment, and a technical report. A technical report for a WPAP satisfies the plan requirement, provided it properly addresses the proposed underground storage tank facility.

Costs

As previously mentioned, the costs of preparing a geologic assessment are estimated to be between $800 to $8,000; the costs of preparing a WPAP for sites within the recharge zone are estimated to be between $3,000 to $10,000; and fees collected by the agency for the review and approval of the plans are estimated to range from $1,000 - $5,000, depending on the size of the site and the nature of the activity.

Application fees for SCS plans are estimated to be between $500 and $5,000, and costs associated with five-year testing of the lines once they are put into use could be as low as $2,000 and as high as several million dollars. At this time, agency staff are not aware of any existing SCSs over the proposed recharge zone.

For underground or permanent aboveground storage tank system facility plans and modifications, the agency application fee is based on the number of tanks or piping systems for which approval is sought. The fee is $500 per tank or piping system, with a minimum fee of $500 and a maximum fee of $5,000. Double walled underground storage tanks or the equivalent may cost between $6,000 to $9,000 above the cost for a single-walled tank.

Recharge Zone to Contributing Zone

In those areas currently designated as recharge zone, but proposed for change to contributing zone, regulated activities would have to meet less stringent requirements. Only activities that will disturb five or more acres or are part of a common plan for development that will disturb five or more acres would trigger the need for a contributing zone plan.

However, the BMP requirements during and after construction are unchanged from the recharge zone. Prior to construction, a contributing zone plan will need to be submitted to and approved by the agency for all regulated activities.

Costs

The costs associated with the development over the contributing zone are much lower compared to the recharge zone. No geologic assessment is required for the contributing zone, and the fee for review and approval of a contributing zone plan is $250, regardless of the size and characteristics of the site. The costs associated with preparing the contributing zone plans are estimated to be between $1,000 to $3,000.

The areas re-designated as contributing zone will still have to meet the requirements pertaining to permanent BMPs. The estimated costs associated with the design and installation of BMPs will range from $2,000 to as much as $100,000. Any areas within the jurisdiction of the City of Austin will already have to meet the requirements for permanent BMPs to comply with the City of Austin regulations. Projects in the new contributing zone area will not have to meet these requirements if the project is less than five acres or not part of a larger plan of development that will disturb five or more acres.

Recharge Zone to Contributing Zone Within the Transition Zone

In those areas currently designated as recharge zone, but proposed for change to contributing zone within the transition zone, new regulated activities would have to meet less stringent requirements. A contributing zone plan (rather than a WPAP) would be required only for regulated activities that will disturb five or more acres or are part of a common plan for development, and no geologic assessment would be required. The BMP requirements during and after construction are unchanged from the recharge zone. The prohibition for new industrial and municipal wastewater discharges is unchanged.

No SCS plan would be required. However, if during construction, a sensitive feature is discovered in the path of a sewage line, construction must cease near the feature and the location and extent of those features must be assessed by a geologist and reported to the appropriate regional office in writing within two working days. An engineered plan that will allow the line to be constructed in a manner that will maintain the structural integrity of the line must be submitted and approved by the executive director.

Costs

The costs associated with the development over the contributing zone are much lower compared to the recharge zone. No geologic assessment is required for the contributing zone, and the fee for a contributing zone plan is $250 regardless of the size and characteristics of the site. The costs associated with preparing the contributing zone plans are estimated to be between $1,000 to $3,000. The areas re-designated as contributing zone within the transition zone will still have to meet the requirements pertaining to permanent BMPs. The estimated costs associated with the design and installation of BMPs will range from $2,000 to as much as $100,000. Any areas within the jurisdiction of the City of Austin will already have to meet requirements for permanent BMPs to comply with the City of Austin regulations. Projects in the new contributing zone area will not have to meet these requirements if the project is less than five acres or not part of a larger plan of development that will disturb five or more acres.

Recharge Zone to Transition Zone

In those areas currently designated as recharge zone, but proposed for change to transition zone, new regulated activities would have to meet the less stringent requirements. The types of land development regulated would be limited to only petroleum storage tanks. No WPAP or SCS plans are required. However, statewide requirements for BMPs to control storm water during and after construction would apply.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

The fiscal implications of these sections as proposed may include small businesses but, in general, no adverse fiscal implications are anticipated for small businesses or micro-businesses. The fiscal effects on small businesses are anticipated to be similar to those fiscal effects that may be realized by all classes of business. These effects will not vary with the size of the business, but will vary with the size, location, and nature of development activities that may be proposed and undertaken on the Edwards Aquifer or those associated areas subject to these rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225, which applies only to certain major environmental rules that meet at least one of four criteria. A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. These rules meet the definition of a "major environmental rule" but do not meet any of the four criteria that would trigger applicability of §2001.0225.

First, the proposal does not exceed a standard set by federal law. The only related federal law establishes the Sole Source Aquifer Program implemented by the EPA for portions of the Edwards Aquifer, which applies only to federally-funded projects conducted on the aquifer. Under that program, no federal financial assistance may be made to projects that the EPA determines may contaminate the Edwards Aquifer so as to create a significant hazard to public health. To date, no federal regulations setting technical standards exist. There is no federal law that specifically addresses construction activities that may impact the Edwards Aquifer. Therefore, the proposal does not exceed a standard set by federal law. Moreover, even if the rules did exceed a standard set by federal law, this proposal is specifically required by state law that requires the commission to protect the quality of water in the Edwards Aquifer from pollution (see TWC, §§26.011, 26.046, and 26.0461) and is exempt from the applicability of §2001.0025.

Second, this proposal does not exceed an express requirement of state law. The proposal is designed to implement the commission's statutory responsibility to control the quality of water in the state, including groundwater, under TWC, §§26.011, 26.046, and 28.011. The proposal is intended to comply with the stated requirements of state law and not exceed them.

Third, this proposal does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. This proposal is not covered by any delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program.

Finally, this proposal does not adopt a rule solely under the general powers of the agency instead of under a specific state law. While this proposal adopts a rule under the general powers of the agency, it is also adopted under specific state laws regarding the Edwards Aquifer, TWC, §§26.046, 26.0461, and 28.011, which provide for the protection of the aquifer from pollution.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The specific purpose of the rules is to regulate activities having the potential for causing pollution of the Edwards Aquifer. The rules will substantially advance this specific purpose by delineating more accurate boundaries for the contributing zone, recharge zone, and the transition zone of the Edwards Aquifer. Promulgation and enforcement of these rules could affect private real property.

Texas Government Code, Chapter 2007, prohibits governmental actions that "take" real property, unless the governmental action meets one of the enumerated exceptions. These proposed rules meet the exception in §2007.003(b)(13), which states that a governmental action that is taken in response to a real and substantial threat to public health and safety, and that is designed to significantly advance the health and safety purpose and does not impose a greater burden than necessary, is excepted from the requirements of Chapter 2007. If the Edwards Aquifer is not adequately protected, there is the possibility of degradation to the quality of the water supply that presents a real and substantial threat to public health and safety. The proposed rules will significantly contribute to the prevention of this threat. The Edwards Aquifer is the sole or primary source of water for over 1.5 million people. The proposed rules will define the boundaries of the contributing zone, recharge zone, and the transition zone more accurately. Activities that have the potential for causing significant pollution of the Edwards Aquifer will be regulated appropriately. Therefore, the proposed rules significantly advance public health and safety. These rules are necessary to carry out

the stated authority of the commission to protect human health and the environment.

Additionally, in addition to Texas Government Code, §2007.003(b)(13), §2007.003(c) applies to these rules. Section 2007.003(c) exempts the enforcement or implementation of a statute, ordinance, order, rule, regulation, requirement, resolution, policy, guideline, or similar measure that was in effect September 1, 1995, and that prevents the pollution of a reservoir or an aquifer designated as a "sole source" aquifer. This exception applies to the enforcement or implementation of the entire rule even though only part of the Edwards Aquifer has been designated as a sole source aquifer (see 40 FR 58344 (1975) and 53 FR 20897 (1988)). From March 21, 1990 to December 27, 1996, 30 TAC Chapter 313 regulated activities over the recharge or transition zone of the Edwards Aquifer until the rules were relocated to Chapter 213.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on April 6, 2005, 10:00 a.m. in Building F, Room 2210, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact Joyce Spencer, Office of Legal Services at (512) 239-5017. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, Texas Register Team, Office of Legal Services, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Project Number 2003-029-213-WT. Comments must be received by 5:00 p.m., April 25, 2005. For further information or questions concerning this proposal, please contact Steve Musick, Water Supply Division, at (512) 239-5552.

SUBCHAPTER A. EDWARDS AQUIFER IN MEDINA, BEXAR, COMAL, KINNEY, UVALDE, HAYS, TRAVIS, AND WILLIAMSON COUNTIES

30 TAC §§213.1, 213.3, 213.4, 213.12

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.103, which provides the commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the TWC and other laws of Texas; and TWC, §5.105, which provides the commission with the authority to establish and approve all general policy of the commission by rule. TWC, §26.011, provides that the commission administer the provisions of TWC, Chapter 26, and establish the level of quality to be maintained and control the quality of the water in the state. Waste discharges or impending discharges are subject to rules adopted by the commission in the public interest. TWC, §26.011, also grants the commission with the powers necessary or convenient to carry out its responsibilities. TWC, §26.341, recognizes that it is the policy of the state to maintain and protect the quality of groundwater and surface water resources from certain substances in underground and aboveground storage tanks that may pollute groundwater and surface water resources. TWC, §26.345, allows the commission to develop a regulatory program regarding underground and aboveground storage tanks. Additionally, TWC, §26.046, requires the commission to hold annual public hearings to receive evidence from the public on actions that the commission should take to protect the Edwards Aquifer from pollution; §26.0461 allows the commission to impose fees for inspecting the construction and maintenance of projects covered by plans and for processing plans or amendments that are subject to review or approval under the commission's Edwards Aquifer rules; §26.051 requires the commission to report annually on the Edwards Aquifer program expenses and allocation of fees; §26.121 prohibits unauthorized discharges; §26.137 requires the commission to provide for a 30-day comment period in the review process for Edwards Aquifer protection plans in the contributing zone; §26.401 states the goal for groundwater protection in the state; §27.051(h) prohibits the commission from authorizing an injection well that transects or terminates in the Edwards Aquifer with certain exceptions; and §28.011 authorizes the commission to make and enforce rules for the protection and preservation of groundwater quality. Texas Health and Safety Code (THSC), §361.024, provides the commission with the authority to promulgate rules consistent with the Solid Waste Disposal Act and standards of operation for the management and control of solid waste. THSC, §366.012, provides the commission with the authority to adopt rules governing the installation of on-site sewage disposal systems.

The proposed amendments implement TWC, §28.011, which allows the commission to make and enforce rules and regulations for protecting and preserving the quality of underground water.

§213.1. Purpose.

The purpose of this chapter is to regulate activities having the potential for polluting the Edwards Aquifer and hydrologically connected surface streams in order to protect existing and potential uses of groundwater and maintain Texas Surface Water Quality Standards. The activities addressed are those that pose a threat to water quality.

(1) Consistent with Texas Water Code, §26.401 [~~of the Water Code~~], the goal of this chapter is that the existing quality of groundwater not be degraded, consistent with the protection of public health and welfare, the propagation and protection of terrestrial and aquatic life, the protection of the environment, the operation of existing industries, and the maintenance and enhancement of the long-term economic health of the state.

(2) (No change.)

(3) The executive director shall review and act on an application subject to this chapter. The applicant or a person affected may file with the chief clerk a motion to overturn [~~for reconsideration~~], under §50.139(a), (b), and (d) - (g) [~~§50.39(b)~~ - ~~(f)~~] of this title (relating

to Motion to Overturn Executive Director's Decision [~~for Reconsideration~~]), of the executive director's final action on an Edwards Aquifer protection plan, modification to a plan, or exception.

§213.3. Definitions.

The following words and terms, when used in this chapter, have the following meanings.

(1) Abandoned well--A well that has not been used for six consecutive months. A well is considered to be in use in the following cases:

(A) a non-deteriorated well that [~~which~~] contains the casing, pump, and pump column in good condition; or

(B) a non-deteriorated well that [~~which~~] has been properly capped.

(2) - (3) (No change.)

(4) Appropriate regional office--For regulated activities covered by this chapter and located in Hays, Travis, and Williamson Counties [~~counties~~], the appropriate regional office is Region 11, located in Austin, Texas. For regulated activities covered by this chapter and located in Kinney, Uvalde, Medina, Bexar, and Comal Counties [~~counties~~], the appropriate regional office is Region 13, located in San Antonio, Texas.

(5) Best management practices (BMPs)--A schedule of activities, prohibitions, practices, maintenance procedures, and other management practices to prevent or reduce the pollution of water in the state. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. BMPs are those measures that are reasonable and necessary to protect groundwater and surface water quality, as provided in technical guidance prepared by the executive director or other BMPs that [~~which~~] are technically justified based upon studies and other information that are generally relied upon by professionals in the environmental protection field and are supported by existing or proposed performance monitoring studies, including, but not limited to, the United States Environmental Protection Agency [~~EPA~~], American Society of Civil Engineers, and Water Environment Research Foundation guidance.

(6) - (8) (No change.)

(9) Edwards Aquifer protection plan--A general term that [~~which~~] includes a water pollution abatement plan, organized sewage collection system plan, underground storage tank facility plan, aboveground storage tank facility plan, or a modification or exception granted by the executive director.

(10) Edwards Aquifer protection plan holder--The person [~~Person~~] who is responsible for compliance with an approved water pollution abatement plan, organized sewage collection system plan, underground storage tank facility plan, aboveground storage tank facility plan, or a modification or exception granted by the executive director.

(11) Concentrated [~~Feedlot/concentrated~~] animal feeding operation--As defined in §321.32 of this title (relating to Definitions). [~~A concentrated, confined livestock or poultry facility operated for meat, milk or egg production, growing, stabling, or housing, in pens or houses wherein livestock or poultry are fed at the place of confinement and crop or forage growing or production of feed is not sustained in the area of confinement.~~]

(12) Geologic or manmade features--Features including, but not limited to, closed depressions, sinkholes, caves, faults, fractures, bedding plane surfaces, interconnected vugs, reef deposits, wells, borings, and excavations.

(13) Geologic assessment--A report that [~~which~~] is prepared by a geologist describing site-specific geology.

(14) (No change.)

(15) Groundwater conservation district--Any groundwater district created by the legislature [~~Texas Legislature~~] or the commission subject to [~~under the~~] Texas Water Code, Chapter 36, [~~as a groundwater conservation district~~] to conserve, preserve, and protect the waters of a groundwater [~~an underground~~] water reservoir.

(16) Hazardous substance--Any substance designated as such by the administrator of the United States Environmental Protection Agency [~~EPA~~] under the Comprehensive Environmental Response, Compensation, and Liability Act; regulated in accordance with [~~the~~] Federal Water Pollution Control Act, Chapter 311; or any solid waste, or other substance that is designated to be hazardous by the commission, in accordance with Texas Water Code, §26.263 or Texas Health and Safety Code, §361.003.

(17) Impervious cover--Impermeable surfaces, such as pavement or rooftops, that [~~which~~] prevent the infiltration of water into the soil. Rainwater collection systems for domestic water supplies are not considered impervious cover.

(18) - (21) (No change.)

(22) Organized sewage collection system--Any public or private sewage [~~sewerage~~] system for the collection and conveyance of sewage to a treatment and disposal system that is regulated in accordance with rules of the commission and provisions of Texas Water Code, Chapter 26. A system may include lift stations, force mains, gravity lines, and any other appurtenance necessary for conveying wastewater from a generating facility to a treatment plant.

(23) - (26) (No change.)

(27) Recharge zone--Generally, that area where the stratigraphic units constituting the Edwards Aquifer crop out, including the outcrops of other geologic formations in proximity to the Edwards Aquifer, where caves, sinkholes, faults, fractures, or other permeable features would create a potential for recharge of surface waters into the Edwards Aquifer. The recharge zone is identified as that area designated as such on official maps located in the agency's central office and in the appropriate regional office [~~and groundwater conservation districts~~].

(28) Regulated activity--

(A) (No change.)

(B) Regulated activity does not include:

(i) (No change.)

(ii) agricultural activities, except feedlots/concentrated animal feeding operations that [~~which~~] are regulated under Chapter 321 of this title (relating to Control of Certain Activities by Rule);

(iii) - (v) (No change.)

(29) Sensitive feature--A permeable [~~Permeable~~] geologic or manmade feature located on the recharge zone or transition zone where:

(A) - (B) (No change.)

(30) - (35) (No change.)

(36) Transition zone--That area where geologic formations crop out in proximity to and south and southeast of the recharge zone

and where faults, fractures, and other geologic features present a possible avenue for recharge of surface water to the Edwards Aquifer, including portions of the Del Rio Clay, Buda Limestone, Eagle Ford Group, Austin Chalk, Pecan Gap Chalk, and Anacacho Limestone. The transition zone is identified as that area designated as such on official maps located in the agency's central office and in the appropriate regional office [and groundwater conservation districts].

(37) - (39) (No change.)

§213.4. Application Processing and Approval.

(a) Approval by the executive director.

(1) - (3) (No change.)

(4) Projects in progress when recharge and transition zone maps are revised [and the effective date of this rule].

(A) For areas designated as recharge zone or transition zone on official maps prior to the effective date of this paragraph [rule], and for which this designation did not change [on the effective date of this rule], all Edwards Aquifer protection plans submitted to the executive director, on or after the effective date of this paragraph [the rule], will be reviewed under all the provisions of the subchapter in effect on the date the plan is submitted.

(B) For areas that were newly [not] designated as recharge zone or transition zone on official maps on [prior to] the effective date of this paragraph [rule], regulated activities will be considered to have commenced construction and will be regulated under the provisions of this chapter that were in effect at the time the plan was approved by the executive director [not be subject to this subchapter] if, on the effective date [of the rule], all federal, state, and local approvals or permits required to begin physical construction have been obtained, and if either on-site construction directly related to the development has begun or construction commences within six months of the effective date of this paragraph [the rule].

(C) Regulated activities in areas designated as transition zone on official maps prior to the effective date of this paragraph [rule] and designated as recharge zone on the effective date of this paragraph [rule] will be regulated as transition zone activities if, on the effective date [of the rule], all federal, state, and local approvals or permits required to begin physical construction have been obtained, and if either on-site construction directly related to the development has begun or construction commences within six months of the effective date of this paragraph [the rule].

(D) The effective date of this paragraph is 20 days after the adoption is filed with the Office of the Secretary of State [the amendments to §§213.3 - 213.10 is June 1, 1999].

(5) Assumption of program by local government.

(A) (No change.)

(B) In order to obtain certification, the local government must demonstrate that:

(i) it has a water quality protection program equal to or more stringent than the rules contained in this chapter, including, but not limited to, a program that:

(I) regulates activities covered under this chapter; [,] and

(II) (No change.)

(ii) it has adopted ordinances or has other enforceable means sufficient to enforce the program throughout the local governmental entity's [entities] jurisdiction; and

(iii) (No change.)

(C) (No change.)

(D) An agreement under subparagraph (C) of this paragraph shall not provide for the payment of fees required by this chapter to the local entity, and shall not provide for partial assumption of the program unless expressly authorized by the commission. Fees [; rather, fees] shall be paid to the commission for continued proper oversight and enforcement. [Nor shall such agreement provide for partial assumption of the program unless expressly authorized by the commission.]

(E) (No change.)

(F) Upon written notice, certification may be revoked or suspended by the executive director if the local entity does not meet the terms and conditions of the agreement provided under subparagraph (D) of this paragraph, or fails to meet the criteria for certification provided under subparagraph (B) of this paragraph.

(G) (No change.)

(b) Contents of application [Application].

(1) Forms provided by the executive director. Applications for approval filed under this chapter must be made on forms provided by or approved by the executive director. Each application for approval must, at a minimum, include the following:

(A) the name of the development, subdivision, or facility for which the application is submitted;

(B) (No change.)

(C) the name, address, and telephone number of the owner or any other person signing the application; and

(D) the information needed to determine the appropriate fee under §213.14 of this title (relating to Fee Schedule) for the following plan types:

(i) - (iii) (No change.)

(2) Additional information. Each application must also include the following information, as applicable:

(A) - (D) (No change.)

(E) any other pertinent information related to the application that [which] the executive director may require.

(c) Application submittal.

(1) One [Submit one] original and one copy of the application must be submitted for the executive director's review and additional copies as needed for each affected incorporated city, groundwater conservation district, and county in which the proposed regulated activities will be located. The copies must be submitted to the appropriate regional office.

(2) Only owners, their authorized agent(s), or those persons having the right to possess and control the property that [which] is the subject of the Edwards Aquifer protection plan may submit the plan for review and approval by the executive director.

(d) Signatories to applications [Applications].

(1) Required signature [Signature]. All applications must be signed as follows.

(A) - (B) (No change.)

(C) For a political entity such as a municipality, state, federal, or other public agency, either a principal executive officer or a

duly authorized representative must sign the application. A representative must submit written proof of the authorization.

(D) (No change.)

(2) Proof of authorization to sign [~~Authorization to Sign~~]. The executive director requires written proof of authorization for any person signing an application.

(e) - (f) (No change.)

(g) Deed recordation.

(1) (No change.)

(2) A description of the property boundaries that [~~which~~] is covered by the Edwards Aquifer protection plan shall be recorded in the county deed records.

(3) - (4) (No change.)

(h) Term of approval. The executive director's approval of an Edwards Aquifer protection plan will expire two years after the date of initial issuance, unless prior to the expiration date, substantial construction related to the approved plan has commenced. For purposes of this subsection, substantial construction means more than 10% [~~ten percent~~] of total construction has commenced. If a written request for an extension is filed under the provisions of this subsection, the approved plan will continue in effect until the executive director makes a determination on the request for an extension.

(1) - (2) (No change.)

(3) An Edwards Aquifer protection plan approval or extension will expire and no extension will be granted if more than 50% [~~50 percent~~] of the total construction has not been completed within ten years from the initial approval of a plan. A new Edwards Aquifer protection plan must be submitted to the appropriate regional office with the appropriate fees for review and approval by the executive director prior to commencing any additional regulated activities.

(4) - (5) (No change.)

(i) (No change.)

(j) Modification of previously approved plans. The holder of any approved Edwards Aquifer protection plan must notify the appropriate regional office in writing and obtain approval from the executive director prior to initiating any of the following:

(1) any physical or operational modification of any water pollution abatement structure(s), including, but not limited to, ponds, dams, berms, sewage treatment plants, and diversionary structures;

(2) any change in the nature or character of the regulated activity from that which was originally approved or a change that [~~which~~] would significantly impact the ability of the plan to prevent pollution of the Edwards Aquifer;

(3) - (6) (No change.)

(k) Compliance. The holder of the approved or conditionally approved Edwards Aquifer protection plan is responsible for compliance with this chapter and any special conditions of the approved plan through all phases of plan implementation. Failure to comply with any condition of the executive director's approval is a violation of this chapter [~~rule~~] and is subject to administrative rule or orders and penalties as provided under §213.10 of this title (relating to Enforcement). Such violations may also be subject to civil penalties and injunction.

§213.12. Application Fees.

The person submitting an application for approval or modification of any plan under this chapter must pay an application fee in the amount set forth in §213.14 of this title (relating to Fee Schedule). The fee is due and payable at the time the application is filed. The fee must be sent to the appropriate regional office or the cashier in the agency headquarters located in Austin [~~Office of the agency~~], accompanied by an Edwards Aquifer Fee Application Form, provided by the executive director. Application fees must be paid by check or money order, payable to the "Texas Commission on Environmental Quality [~~Natural Resource Conservation Commission~~]." If the application fee is not submitted in the correct amount, the executive director is not required to consider the application until the correct fee is submitted.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-5017

SUBCHAPTER B. CONTRIBUTING ZONE TO THE EDWARDS AQUIFER IN MEDINA, BEXAR, COMAL, KINNEY, UVALDE, HAYS, TRAVIS, AND WILLIAMSON COUNTIES

30 TAC §§213.20 - 213.22, 213.24, 213.27

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.103, which provides the commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the TWC and other laws of Texas; and TWC, §5.105, which provides the commission with the authority to establish and approve all general policy of the commission by rule. TWC, §26.011, provides that the commission administer the provisions of TWC, Chapter 26, and establish the level of quality to be maintained and control the quality of the water in the state. Waste discharges or impending discharges are subject to rules adopted by the commission in the public interest. TWC, §26.011, also grants the commission with the powers necessary or convenient to carry out its responsibilities. TWC, §26.341, recognizes that it is the policy of the state to maintain and protect the quality of groundwater and surface water resources from certain substances in underground and aboveground storage tanks that may pollute groundwater and surface water resources. TWC, §26.345, allows the commission to develop a regulatory program regarding underground and aboveground storage tanks. Additionally, TWC, §26.046, requires the commission to hold annual public hearings to receive evidence from the public on actions that the commission should take to protect the Edwards Aquifer from pollution; §26.0461 allows the commission to impose fees for inspecting the construction and maintenance of projects covered by plans and for processing plans or amendments that are subject to review or approval under the commission's Edwards Aquifer rules; §26.051 requires the commission to report annually on the Edwards Aquifer program expenses and allocation

of fees; §26.121 prohibits unauthorized discharges; §26.137 requires the commission to provide for a 30-day comment period in the review process for Edwards Aquifer protection plans in the contributing zone; §26.401 states the goal for groundwater protection in the state; §27.051(h) prohibits the commission from authorizing an injection well that transects or terminates in the Edwards Aquifer with certain exceptions; and §28.011 authorizes the commission to make and enforce rules for the protection and preservation of groundwater quality. THSC, §361.024, provides the commission with the authority to promulgate rules consistent with the Solid Waste Disposal Act and standards of operation for the management and control of solid waste. THSC, §366.012, provides the commission with the authority to adopt rules governing the installation of on-site sewage disposal systems.

The proposed amendments implement TWC, §28.011, which allows the commission to make and enforce rules and regulations for protecting and preserving the quality of underground water.

§213.20. Purpose.

(a) (No change.)

(b) Nothing in this subchapter is intended to restrict the powers of the commission or any other governmental entity to prevent, correct, or curtail activities in the contributing zone that result or may result in pollution of the Edwards Aquifer or hydrologically connected surface waters. This subchapter is [~~These rules are~~] not exclusive and other rules also apply. In addition to the rules of the commission, the Texas general and individual [~~EPA NPDES general~~] permits for storm water discharges from construction activities [~~Storm Water Discharges from Construction Activities~~] and local ordinances and regulations providing for the protection of water quality may also apply to activities in the contributing zone.

(c) The executive director must review and act on contributing zone plans subject to this subchapter. The applicant or a person affected may file with the chief clerk a motion to overturn [~~for reconsideration~~], under §50.139 (a), (b), and (d) - (g) [~~§50.39(b)-(f)~~] of this title (relating to Motion to Overturn Executive Director's Decision [~~for Reconsideration~~]), of the executive director's final action on a contributing zone plan or modification to a plan.

§213.21. Applicability and Person or Entity Required to Apply.

(a) This subchapter applies [~~These rules apply~~] only to the contributing zone as defined in §213.22 of this title (relating to Definitions) of the Edwards Aquifer. This subchapter is [~~These rules are~~] not intended to be applied to any other contributing zones for any other aquifers in the State [~~state~~] of Texas.

(b) This subchapter applies [~~These rules apply~~] only to regulated activities disturbing at least five acres, or regulated activities disturbing less than five acres which are part of a larger common plan of development or sale with the potential to disturb cumulatively five or more acres.

(c) Areas identified as contributing zone within the transition zone described by [~~definition~~] §213.22[~~(2)~~] of this title and delineated on the official recharge and transition zone maps of the agency as provided by §213.3[~~(25) and (34)~~] of this title (relating to Definitions), [~~respectively,~~] are subject to both the requirements of this subchapter governing the contributing zone and to the provisions of the recharge zone in §213.5(a)(3) and (4), (c)(3)(K), and (d) - (f) [~~§213.5(a)(3) and (4); 213.5(d), (e), and (f)~~] of this title (relating to Required Edwards Aquifer Protection Plans, Notification, and Exemptions [~~Prohibited Activities~~]); §213.6(a) and (b) of this title (relating to Wastewater Treatment and Disposal Systems); and §213.7 [~~213.7~~] of this title (relating to Plugging of Abandoned Wells and Borings [~~Required Edwards Aquifer Protection Plans, Notification, and Exemptions~~]); and to the transition zone provisions of §213.8(b) [~~213.8(b)~~] of this title (relating to Prohibited Activities) [~~which govern activities in the transition zone~~].

(d) - (e) (No change.)

(f) Applicable regulation for projects in progress when contributing zone or contributing zone within the transition zone designations are revised.

(1) For areas designated as contributing zone or contributing zone within the transition zone on official maps prior to the effective date of this subsection, and for which this designation did not change on the effective date of this subsection, all plans submitted to the executive director, on or after the effective date of this section, will be reviewed under all the provisions of this subchapter in effect on the date the plan is submitted.

(2) For areas that were newly designated as contributing zone or contributing zone within the transition zone on official maps on the effective date of this subsection, regulated [~~Regulated~~] activities will be considered to have commenced construction and will be regulated under the provisions of this chapter that were in effect at the time the plan was approved by the executive director [~~not subject this subchapter~~] if, on the effective date [~~of the rule~~], all federal, state, and local approvals or permits required to begin physical construction have been obtained, and if either on-site construction directly related to the development has begun or construction commences within six months of the effective date of this section [~~the rule~~].

(3) The effective date of this subsection is 20 days after the adoption is filled with the Office of the Secretary of State.

(g) Assumption of program by local government.

(1) (No change.)

(2) In order to obtain certification, the local government must demonstrate:

(A) it has a water quality protection program equal to or more stringent than the rules contained in this subchapter, including, but not limited to, a program that:

(i) regulates activities covered under this chapter; [~~,~~] and

(ii) (No change.)

(B) - (C) (No change.)

(3) (No change.)

(4) An agreement under paragraph (3) of this subsection shall not provide for the payment of fees required by this chapter to the local entity, and shall not provide for partial assumption of the program unless expressly authorized by the commission. Fees [~~; rather, fees~~] shall be paid to the commission. [~~Nor shall such agreement provide for partial assumption of the program unless expressly authorized by the commission.~~]

(5) Certification must [~~shall~~] be for a term not to exceed five years, subject to renewal.

(6) - (7) (No change.)

[~~(h) The effective date of this subchapter is June 1, 1999.~~]

§213.22. Definitions.

The definitions in Texas Water Code, §§26.001, 26.263, and 26.342, and in §213.3 of this title (relating to Definitions) apply to this subchapter. Those definitions have the same meaning unless the context

in which they are used clearly indicates otherwise, or those definitions are inconsistent with the definitions listed in this section.

(1) Best management practices [~~Management Practices (BMPs)~~]--Schedule of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to the Edwards Aquifer and hydrologically connected surface streams. Best management practices [~~BMPs~~] also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(2) Contributing zone--The area or watershed where runoff from precipitation flows downgradient to the recharge zone of the Edwards Aquifer. The contributing zone is illustrated on Contributing Zone (Southern Part) for the Edwards Aquifer and Contributing Zone (Northern Part) for the Edwards Aquifer. The contributing zone is located upstream (upgradient) and generally north and northwest of the recharge zone for the following counties:
Figure 1: 30 TAC §213.22(2) [~~Figure 1: 30 TAC §213.22(2)~~]
Figure 2: 30 TAC §213.22(2) [~~Figure 2: 30 TAC §213.22(2)~~]

(A) - (D) (No change.)

(3) Contributing zone within the transition zone--The area or watershed where runoff from precipitation flows downgradient to the recharge zone of the Edwards Aquifer. The contributing zone within the transition zone is depicted in detail on the official recharge and transition zones maps of the agency as provided for in §213.3 [~~§213.3(25) and (34)~~] of this title (relating to Definitions) [~~, respectively~~]. The contributing zone within the transition zone is located [~~downstream (downgradient) and~~] generally south and east [~~southeast~~] of the recharge zone and includes specifically those areas where stratigraphic units not included in the Edwards Aquifer crop out at topographically higher elevations and drain to stream courses where stratigraphic units of the Edwards Aquifer crop out and are mapped as recharge zone.

(4) Texas [~~EPA National~~] Pollutant Discharge Elimination System [~~general~~] permits for storm water discharges from construction activities (TPDES [~~EPA NPDES general~~] permits)--Texas Pollutant Discharge Elimination System [~~United States Environmental Protection Agency national pollutant discharge elimination system~~] general or individual permits issued by the agency for storm water discharges from construction activities in Texas [~~Region 6 as reissued in the July 6, 1998 issue of the Federal Register (63 FR 36489-36519)~~].

(5) Notice of intent (NOI) [~~NOI~~]--Notice of intent required by the Texas Pollutant Discharge Elimination System [~~EPA NPDES~~] general permits for storm water discharges from construction activities.

(6) Regulated activity--

(A) Any construction or post-construction activity occurring on the contributing zone of the Edwards Aquifer that has the potential for contributing pollution to surface streams that enter the Edwards Aquifer recharge zone.

(i) These activities include construction or installation of:

(I) - (VII) (No change.)

(ii) Clearing, excavation, or other activities which alter or disturb the topographic or existing storm water [~~stormwater~~] runoff characteristics of a site are regulated activities.

(iii) Any other activities that pose a potential for contaminating storm water [~~stormwater~~] runoff are regulated activities.

(B) "Regulated activity" does not include:

(i) (No change.)

(ii) agricultural activities, except feedlots/concentrated animal feeding operations that [~~which~~] are regulated under Chapter 321 of this title (relating to Control of Certain Activities by Rule);

(iii) (No change.)

(iv) routine maintenance of existing structures that does not involve site disturbance including, [~~such as~~] but not limited to:

(I) the resurfacing of existing paved roads, parking lots, sidewalks, or other development-related impervious surfaces; [~~,~~] and

(II) the building of fences, or other similar activities that [~~which~~] present little or no potential for contaminating hydrologically-connected surface water;

(v) - (vi) (No change.)

(7) Site--The entire area within the legal boundaries of the property described in the application. Regulated activities on a site located partially on the recharge zone and the contributing zone must be treated as if the entire site is located on the recharge zone, subject to the requirements under Subchapter A of this chapter (relating to Edwards Aquifer in Medina, Bexar, Comal, Kinney, Uvalde, Hays, Travis, and Williamson Counties).

§213.24. Technical Report.

For all regulated activities, a technical report must accompany the application for contributing zone plan approval. The report must address the following issues. The site description, controls, maintenance, and inspection requirements for the storm water pollution prevention plan (SWPPP) developed under the Texas Pollutant Discharge Elimination System (TPDES) [~~EPA NPDES~~] general permits for storm water [~~stormwater~~] discharges may be submitted to fulfill paragraphs (1) - (5) of this section [~~of the technical report~~], providing the following requirements are met.

(1) The report must contain a location map and the site plan.

(A) (No change.)

(B) The site plan must be drawn at a minimum scale of one [~~1~~] inch to 400 feet. The site plan must show:

(i) - (iv) (No change.)

(v) areas of soil disturbance and areas that [~~which~~] will not be disturbed;

(vi) - (viii) (No change.)

(ix) locations where storm water [~~stormwater~~] discharges to a surface water.

(2) The report must describe the nature of the regulated activity (such as residential, commercial, industrial, or utility), including:

(A) - (D) (No change.)

(E) other factors that could affect the surface water quality. [~~;~~]

(3) The report must describe the volume and character of storm water [~~stormwater~~] runoff expected to occur. Estimates of storm water [~~stormwater~~] runoff quality and quantity should be based on area and type of impervious cover, as described in paragraph (2)(C) of this section. An estimate of the runoff coefficient of the site for both the

pre-construction and post-construction conditions should be included in the report.

(4) The report must describe any activities or processes that [which] may be a potential source of contamination and must provide the following information:

(A) the intended sequence of major activities that [which] disturb soils for major portions of the site (e.g., grubbing, excavation, grading, utilities, and infrastructure installation);

(B) (No change.)

(C) a site map indicating the following: approximate slopes anticipated after major grading activities; areas of soil disturbance; areas that [which] will not be disturbed; locations of major structural and nonstructural controls identified in the technical report; locations where stabilization practices are expected to occur; surface waters (including wetlands); and locations where storm water [stormwater] discharges to a surface water;

(D) (No change.)

(E) the name of the receiving water(s) at or near the site that [which] will be disturbed or [which] will receive discharges from disturbed areas of the project.

(5) The report must describe the temporary best management practices (BMPs) and measures that will be used during construction. The technical report must clearly describe for each major activity identified in paragraph (4) of this section appropriate control measures and the general timing (or sequence) during the construction process when the measures will be implemented. The SWPPP [storm water pollution prevention plan (SWPPP)] developed under the TPDES [EPA NPDES] general permits for storm water [stormwater] discharges may be submitted to fulfill this part of the technical report providing the following requirements are met.

(A) BMPs and measures must prevent pollution of surface water or storm water [stormwater] that originates upgradient from the site and flows across the site.

(B) BMPs and measures must prevent pollution of surface water that originates on-site or flows off the site, including pollution caused by contaminated storm water [stormwater] runoff from the site.

(C) A plan for the inspection of the temporary BMPs [best management practices] and measures and for their timely inspection, maintenance, repair, and, if necessary, retrofit must be included in the report.

(D) BMPs and measures must meet the requirements contained in §213.5(b)(4)(D)(i) of this title (relating to Required Edwards Aquifer Protection Plans, Notification, and Exemptions).

(E) - (F) (No change.)

(G) All control measures must be properly selected, installed, and maintained in accordance with the manufacturer's [manufacturers] specifications and good engineering practices. If periodic inspections by the applicant or the executive director or other information indicates a control has been used inappropriately, or incorrectly, the applicant must replace or modify the control for site situations.

(H) If sediment escapes the construction site, off-site accumulations of sediment must be removed at a frequency sufficient to minimize off-site [offsite] impacts (e.g., fugitive sediment in street could be washed into surface streams or sensitive features by the next rain).

(I) Sediment must be removed from sediment traps or sedimentation ponds when design capacity has been reduced by 50% [50 percent].

(J) Litter, construction debris, and construction chemicals exposed to storm water must [stormwater shall] be prevented from becoming a pollutant source for storm water [stormwater] discharges (e.g., screening outfalls, picked up daily).

(6) The report must describe the permanent BMPs [best management practices (BMPs)] and measures that will be used after construction.

(A) BMPs and measures must prevent pollution of surface water or storm water [stormwater] originating on-site or upgradient from the site and flows across the site.

(B) BMPs and measures must prevent pollution of surface water downgradient of the site, including pollution caused by contaminated storm water [stormwater] runoff from the site.

(C) BMPs and measures must meet the requirements contained in §213.5(b)(4)(D)(ii) of this title.

(i) Construction plans and design calculations for the proposed permanent BMPs and measures must be prepared by or under the direct supervision of a Texas licensed professional engineer [Licensed Professional Engineer]. All construction plans and design information must be signed, sealed, and dated by the Texas licensed professional engineer [Licensed Professional Engineer].

(ii) (No change.)

(iii) Pilot-scale field testing (including water quality monitoring) may be required for permanent BMPs and measures that are not contained in technical guidance recognized by or prepared by the executive director.

(I) (No change.)

(II) No additional approvals will be granted until the pilot study is complete and the applicant demonstrates adequate protection of surface water that enters the recharge [recharges] zone of the Edwards Aquifer.

(III) (No change.)

(IV) If the innovative technology demonstrates inadequate protection of surface streams that [which] enter the recharge zone of the Edwards Aquifer, a retrofit of the permanent BMP may be required to achieve compliance with §213.5(b)(4)(D) of this title and no additional units will be approved for use on the contributing zone.

(7) The technical report must describe the measures that will [to] be taken to avoid or minimize surface stream contamination, or changes in the way that [in which] water enters a stream as a result of construction and development. The measures should address the following:

(A) increased stream flashing; [,]

(B) the creation of stronger flows and instream [in-stream] velocities; [,] and

(C) other instream [in-stream] effects caused by the regulated activity that [which] increase erosion that results in water quality degradation.

(8) (No change.)

(9) The technical report must describe the measures that will be used to contain any spill of static hydrocarbons or hazardous

substances such as on a roadway or from a pipeline or temporary aboveground storage tank system of 250 gallons or more.

(A) (No change.)

(B) Temporary aboveground storage tank systems of 250 gallons or more cumulative storage capacity must be located a minimum horizontal distance of 150 feet from the five-year [~~five year~~] floodplain of any stream drainage.

(10) The technical report must indicate the placement of permanent aboveground storage tank facilities. Permanent aboveground storage tank facilities for static hydrocarbons [~~hydrocarbon~~] and hazardous substances with cumulative storage capacity of 500 gallons or greater must be constructed, and spills removed using the standards contained in §213.5(e)(1) of this title.

(11) Exemption.

(A) Regulated activities exempt from the contributing zone [~~Contributing Zone~~] plan application requirements under this section are:

(i) (No change.)

(ii) the installation of underground tanks for the storage of static hydrocarbons [~~hydrocarbon~~] and hazardous substances.

(B) An individual land owner who seeks to construct his/her own single-family residence or associated residential structures on the site is exempt from the contributing zone plan application requirements under this subchapter, provided that the land owner [~~he/she~~] does not exceed 20% [~~20 percent~~] impervious cover on the site.

(C) Temporary erosion and sedimentation controls are required to be installed and maintained for exempted activities on the contributing zone. All temporary erosion and sedimentation controls must meet the requirements contained in paragraph (5) of this section, must be installed prior to construction, must be maintained during construction, and may be removed only when vegetation is established and the construction area is stabilized. This subparagraph does not apply to single-family [~~single family~~] residences on a site greater than five [~~5~~] acres or on a site less than five [~~5~~] acres and not a part of a common plan of development or sale with the potential to disturb cumulatively five or more acres.

(D) The executive director may monitor storm water [~~stormwater~~] discharges from these projects to evaluate the adequacy of the temporary erosion and sedimentation control measures. Additional protection will be required if the executive director determines that these controls are inadequate to protect water quality.

§213.27. Contributing Zone Plan Application and Exception Fees.

The person submitting an application for approval or modification of any contributing zone plan or exception under this subchapter must pay an application fee of $250. The fee is due and payable at the time the application is filed. The fee must be sent to either the appropriate regional office or the cashier in the agency headquarters located in Austin, accompanied by an Edwards Aquifer Contributing Zone Fee Application Form, provided by the executive director. Application fees must be paid by check or money order, payable to the "Texas Commission on Environmental Quality." [~~Natural Resource Conservation Commission."~~] If the application fee is not submitted in the correct amount, the executive director is not required to consider the application until the correct fee is submitted.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 4. SCHOOL LAND BOARD

CHAPTER 155. LAND RESOURCES

SUBCHAPTER A. COASTAL PUBLIC LANDS

31 TAC §155.4, §155.15

The School Land Board (Board) proposes amendments to §155.4, relating to Permits and §155.15, relating to Fees. The permits authorize continued use of previously unauthorized structures on coastal public lands in accordance with Texas Natural Resources Code §§33.119 - 33.131. The amendment to §155.4(h) delegates authority to the commissioner of the Texas General Land Office (Land Office) to approve a permit renewal request without Board approval if the request is consistent with the criteria as set forth in subsection (c) of §155.4, provided that the permit holder has not made or proposed modifications to the permitted structure(s) that constitute major repairs other than a modification that reduces the dimensions of the structure(s). In addition, the amendments to §155.4(o) establish procedures for competitive bids for issuance of permits for structures determined to be abandoned or for which the permit was terminated by the board for cause. The amendments to §155.15 establish filing fees and fees for bonus payments for permits awarded on the basis of such competitive bids.

Mr. Rene Truan, Deputy Commissioner and Director for the Asset Inspection Division, has determined that for the first five-year period that the proposed rulemaking is in effect there will be no fiscal implications for local government. Mr. Truan determined that there will be fiscal implications for the state as a result of enforcing the rules as amended. It is estimated that the Land Office will experience an increase in revenue from the competitive bid process as follows: approximately $50,000 in bonus payments from successful bidders each year (estimated on the basis of $10,000 per permit with an estimated five cabin permits awarded each year under the program) and approximately $5,000 in annual payments from new cabin permit holders the first year, increasing by $5,000 each year ($1,000 per permit with an estimated five additional permits awarded each year).

Mr. Truan also has determined that for each year of the first five-year period the proposed rulemaking is in effect, the public benefit will be the ability of the Land Office to administer the permitted cabin structure program more efficiently by streamlining the approval process for routine renewal requests for cabin structure permits. The public will also benefit by a reduction in the time required for approval of routine renewal requests for cabin structure permits. The public benefits from establishing a competitive bid process for abandoned and terminated cabin structure permits are two fold. First, the process makes available to the public

previously inactive permits in a fair and impartial manner. Secondly, it provides additional revenue for managing coastal public lands. Mr. Truan has determined that there will be no additional cost of compliance for small or large businesses since the structures for which permits may be obtained may be used only for noncommercial, recreational purposes. Those individuals who are successful bidders for cabin structure permits under the competitive bid process will experience estimated increased costs of at least $15,000 over a five year period as a result of implementing the amended sections, including a minimum $10,000 bonus payment and $1,000 each year in annual payments.

The Board has determined that the proposed rulemaking will have no adverse local employment impact that requires an impact statement pursuant to the Government Code, §2001.022.

The Board has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments to §155.4 are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed rulemaking implements legislative requirements in Texas Natural Resources Code §§33.119 - 33.131 providing that the Board may issue permits authorizing limited continued use of previously unauthorized structures on coastal public land if the use is sought by one who is claiming a interest in the structure but is not incident to the ownership of littoral property.

The Board has evaluated the proposed rulemaking in accordance with Texas Government Code, §2007.043(b), and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines, to determine whether a detailed takings impact assessment is required. The Board has determined that the proposed rulemaking does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Sections 17 and 19, of the Texas Constitution. Furthermore, the Board has determined that the proposed rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the rule amendments. The Board has determined that the proposed rulemaking will not result in a taking of private property and that there are no adverse impacts on private real property interests inasmuch as the cabin structures are the property of the state.

The proposed rulemaking is subject to the Coastal Management Program (CMP), 31 TAC §505.11(a)(1)(H) and §505.11(c), relating to the Actions and Rules Subject to the CMP. The Board has reviewed these proposed actions for consistency with the CMP's goals and policies in accordance with the regulations of the Coastal Coordination Council (Council). Since the requests for renewal of structure cabin permits as well as those permits awarded as a result of the competitive bid process must meet the same criteria as set forth in subsection (c) of §155.4 for Board approval, the Board has determined that the proposed actions are consistent with applicable CMP goals and policies. The proposed amendments will be distributed to council members in order to provide them an opportunity to provide comment on the consistency of the proposed new rules during the comment period.

To comment on the proposed rulemaking or its consistency with the CMP goals and policies, please send a written comment to Ms. Deborah Cantu, Texas Register Liaison, Texas General Land Office, P. O. Box 12873, Austin, TX 78711, facsimile number (512) 463-6311 or email to deborah.cantu@glo.state.tx.us. Written comments must be received no later than thirty (30) days from the date of publication of this proposal.

The amendments are proposed under the Texas Natural Resources Code, §§33.119 - 33.131, providing that the Board may issue permits authorizing limited continued use of previously unauthorized structures on coastal public land; and Texas Natural Resources Code, §33.064, providing that the Board may adopt procedural and substantive rules which it considers necessary to administer, implement and enforce Texas Natural Resources Code, Chapter 33.

Texas Natural Resources Code, §§33.119 - 33.131 are affected by the proposed amendments.

§155.4. Permits.

(a) Issuance. The board may issue permits authorizing limited continued use of previously unauthorized structures, as defined in subsection (b) of this section, on coastal public lands, where such use is sought by one claiming an interest in any such structure but is not incident to the ownership of littoral property. This section is not intended to limit the authority granted to the commissioner or the School Land Board in the management of the surface estate in coastal public lands, or to be the exclusive means by which the commissioner or board may grant permission for the use of coastal public lands.

(b) Definition. A structure under this section shall be defined as any housing, capable of residential use or which otherwise would typically be considered an improvement on real property, which is in any manner attached or affixed to coastal public land and is not associated with the ownership of littoral property.

(c) Criteria. Permits granted pursuant to this section shall be subject to the following policies, provisions, and conditions, in addition to those generally applicable to the Act.

(1) The board may not:

(A) grant any permit authorizing the continued use of any structure located within 1,000 feet of:

(i) privately owned littoral property, without the written consent of the littoral owner;

(ii) any federal or state wildlife sanctuary or refuge;

(iii) any federal, state, county, or city park bordering on coastal public lands;

(B) grant any permit which would be in violation of the public policy of this state as expressed in these sections and regulations;

(C) grant any permit for any structure not in existence on August 27, 1973;

(D) grant more than one permit per person, immediate family, organization, company, or group; or

(E) grant any permit for dilapidated or derelict structures. A structure is considered "dilapidated" or "derelict" if it is decayed, deteriorated, structurally unsound, fallen into partial ruin, or has

been abandoned either through neglect or misuse. This provision shall not prohibit the issuance of a new contract for a previously abandoned structure, provided that the permit holder agrees to rebuild or relocate the structure within one year of contract issuance.

(2) A permit authorizing continued use of a previously unauthorized structure on coastal public lands shall be deemed automatically revoked and terminated if the coastal public land where the structure is located is subsequently leased for public purposes or exchanged for littoral property, or if such land is conveyed to a navigation district as provided by law.

(3) Every permit shall provide that in the event the terms of the permit are broken, the permit may, at the option of the board, be terminated.

(4) Permitted structures may be used only for noncommercial recreational purposes. Acceptance of payment for use of a permitted structure, or for services connected with use of the structure, is expressly prohibited.

(d) Nuisance. All structures now existing or which shall be built, for which a permit is required pursuant to this section, have been declared by law to be the property of the state, and any construction, maintenance, or use of such structure except as authorized in this section is declared a nuisance per se and is expressly prohibited.

(e) Interest claim. Any person seeking to obtain an interest in a structure shall apply to the board for a permit. The application shall be accompanied by the appropriate fees, as set forth in §155.15 of this title (relating to Fees) [~~§155.10 of this title (relating to Coastal Public Land Fees)~~], and any documentation requested by the board.

(f) Board approval. The board may approve, deny, or approve with qualifications an application for a permit. If an application is approved by the board, the appropriate contract forms and related materials shall be forwarded to the applicant for completion. The board may include in its approval any provisions deemed necessary to protect the state's interest in coastal public lands and the public welfare.

(g) Term. The board shall set the term of the permit, which shall not exceed five years. No construction or other activities may commence at the site prior to execution of the structure permit by the commissioner of the General Land Office.

(h) Renewal. The board may, at its discretion, renew a permit upon receipt of a renewal request and the required fees from the current permit holder if all previous contractual conditions have been met. The commissioner may approve a permit renewal request without board approval if the request is consistent with the criteria as set forth in subsection (c) of this section, provided that the permit holder has not made or proposed modifications to the permitted structure(s) that constitute major repairs other than a modification that reduces the dimensions of the structure(s). If the commissioner approves a renewal request, the appropriate contract forms and related materials shall be forwarded to the permittee for completion. The commissioner may include in his approval any provisions deemed necessary to protect the state's interest in coastal public lands and the public welfare.

(i) Relocation. The board may require relocation of any structure permitted under this section if it is determined to be in the best interest of the state. The permit holder shall be provided written notice stating that relocation of the permit is required, and explaining the reasons for relocation. Failure to comply with terms of a relocation notice may be considered grounds for termination of a permit.

(j) Transfer of interest. Board approval is required for the transfer of any interest in a permit from a current permit holder to another person. To transfer a permit, the current permit holder shall notify the board in writing of intent to terminate the existing contract, and shall provide the name of a person who seeks to assume responsibility for that site. The prospective permittee shall be forwarded the appropriate forms, and shall submit a completed permit application request and required fees to the board. To accomplish the transfer of interest, the board shall then terminate the original permit and, during the same meeting, issue a new permit for the same site to the person specified by the original permit holder, providing all original contract requirements have been complied with and all fees have been paid.

(k) Major repairs. Any action which alters the square footage of an existing permitted structure shall be considered a major repair and shall require prior approval from the board. The board may approve, deny, or approve with qualifications a request for major repairs to, or for the rebuilding of, a permitted structure. Examples of major repairs include, but are not limited to:

(1) modification or renovation work which alters the dimensions of structures currently in existence;

(2) the addition of any structure to an existing permitted facility;

(3) the relocation of any structure or facility from its permitted location; or

(4) any activity requiring dredging or filling.

(l) Minor repairs. Minor repairs may be made to a permitted structure without prior approval of the board. Minor repairs shall include routine repairs to existing docks, piers, and the structure, and other normal maintenance required to maintain a structure in a safe and secure manner but which does not alter the authorized dimensions. Examples of minor repairs include, but are not limited to:

(1) replacement of tin or shingles on roofs, boards on floors, walls, walkways, or decks when the structural dimensions are not increased;

(2) replacement of pilings or other structural members that do not require dredging or filling;

(3) painting and maintenance activities; and

(4) addition of windows, doors, or rails to an existing structure.

(m) Abandoned structures. Structures determined by the board to be abandoned may be removed from coastal public lands or permitted to an interested party through a competitive bid process approved by the board. Structures may be considered abandoned if:

(1) no response is received to a notice posted on the structure citing the Act which requires board authorization for the structure, and containing a request that the interest holder contact the General Land Office within a specified period of time;

(2) the interest holder in an unpermitted structure fails to complete the permit application process within 60 days after [~~once~~] contact with the General Land Office has been made; or

(3) all reasonable attempts to contact a permit holder at the last known address have failed.

(n) Termination. Failure to comply with these rules and regulations shall be justification for termination of the permit by the board. A permit holder shall have 60 days from the date of termination by the board to remove all personal property from the structure provided all

required fees have been paid. The board shall have discretionary authority to revise this time limit, to require permittee to remove any or all structures and man-made improvements, or to assess the costs for repair of any damage to state lands and/or for any necessary removal of debris at the permit site. Any personal property remaining at the site after the 60 days, or the prescribed period set by the board, shall become property of the state and may be disposed of at the board's discretion. Structures for which the permit is terminated by the board for cause under this subsection may be removed from coastal public lands or permitted to an interested party through a competitive bid process approved by the board.

(o) Issuance of permits to new permit holders for structures determined to be abandoned or for which the permit was terminated by the board for cause. Structures determined by the board to be abandoned or for which the interest of the previous permit holder was terminated for cause may be permitted to an interested party through a competitive bid process approved by the board in accordance with this subsection.

(1) Nominations of structures for permitting. The board, General Land Office staff, or persons seeking to obtain an interest in a specific structure may nominate for permitting a structure determined by the board to be abandoned or for which the interest of the previous permit holder was terminated for cause. Nominated structures will be evaluated by General Land Office coastal leasing staff as to suitability for permitting, including consideration of such factors as location, impacts to natural resources, and condition of the structure. The General Land Office staff may recommend relocation or rebuilding of a structure nominated for permitting.

(2) Advertising of availability of nominated structures for permitting. The board will set the terms and conditions upon which nominated structures will be offered for permitting. These terms will be advertised and bids taken.

(3) Competitive bids for permitting of nominated structures. Competitive bids may be received by the board. Anyone who notified the General Land Office, in writing, of a desire to obtain an interest in a particular nominated structure before the terms are advertised, will be furnished a bid package at least 10 business days prior to the date set for awarding of the permit for a nominated structure. Bid proposals for permits for nominated structures must specify and describe the design of the structure proposed and must be submitted with the prospective bidder's payment of his bid offer for the bonus payment and filing fee.

(4) Permit fees for nominated structures. The appropriate filing fee, bonus payment, new contract issuance fee, and annual fee for nominated structures will be determined as provided by §155.15 of this title (relating to Fees).

(5) Awards. After evaluation of all proposals, including consideration of such factors as the prospective bidder's compliance with the board's structure design guidelines and compliance history relating to structures on coastal public land, the board may award a permit for a nominated structure to the bidder submitting the proposal determined by the board to be in the best interests of the state.

(6) Improvements. Any structure to be constructed in accordance with a permit issued pursuant to this bid process is the property of the State of Texas, as provided in the Texas Natural Resources Code, §33.131.

(p) [(o)] General provisions. Each permit issued by the board or commissioner shall be subject to the following general provisions.

(1) The permit number must be displayed on the structure in block numerals no less than 10 inches high. The numerals must be readily visible from the normal route of access and should be of a color that contrasts with the color of the structure. Decals, paint, or metal numerals may be used.

(2) All structures on coastal public lands shall be subject to inspection at any time by the board or its authorized representatives without prior notice to the permit holder.

(3) All structures shall be maintained in good repair and safe condition, and shall be kept in a clean and sanitary condition acceptable to the state.

(4) No domestic or wild animals of any type shall be permanently released upon state-owned islands. Domestic animals shall be prevented from disturbing nesting birds on state-owned islands.

(5) An applicant, by accepting a permit for a structure on coastal public land, agrees and consents to the following:

(A) to comply with all regulations which the board determines to be necessary and proper for the protection, conservation, and orderly development of coastal public lands;

(B) to indemnify the State of Texas against any and all liability for damage to life, person, or property arising from the permittee's occupation and use of the area covered by the interest granted; and

(C) to keep the commissioner of the General Land Office informed at all times of his or her current mailing address and telephone number.

(6) The approval of a structure permit by the board or commissioner grants exclusive rights to the permit holder for the permitted structure only, and does not prevent the board or commissioner from issuing other grants of interest for the same area or implementing specific land management practices at their [its] discretion.

§155.15. Fees.

(a) (No change.)

(b) School Land Board fees and charges. The School Land Board is authorized and required under the Natural Resources Code, Chapter 33, to collect the fees and charges set forth in this subsection where applicable.

(1) (No change.)

(2) Coastal fees and charges. The School Land Board will charge the following coastal lease and coastal easement fees for use of coastal public land, and will charge the following structure registration and permit fees. The School Land Board charge will be based on either the fixed fee schedule or the alternate commercial, industrial, residential, and public formulas as delineated in subparagraphs (C) and (D) of this paragraph. The greater of the fixed fee or formula rate will be charged.

(A) - (D) (No change.)

(E) Structure (cabin) permits:

(i) fees:

(I) refundable deposit: $200;

(II) annual fee for all structures excluding piers, docks, and walkways will be calculated at $.60 per square foot per year/$175 minimum;

(III) contract renewal: $175;

(IV) new contract issuance or transfer of interest approved by the board: $325;

(V) bonus payment for new contract issuance for structure determined by the board to be abandoned or for which the permit was terminated by the board for cause: negotiable/ minimum to be determined by the board;

(VI) filing fee for competitive bid proposal for permit for structure determined by the board to be abandoned or for which the permit was terminated by the board for cause: $50;

(VII) [~~(V)~~] late payment fee: 25% of past due amount;

[~~(VI)~~ ~~minimum annual payment: $175;~~]

(ii) permittee may apply for a continuation of the previous fee if the permit was issued prior to July 18, 1983 (the date of the initial rate increase), and if the annual fee will impose an undue financial hardship on a current permit holder.

(F) - (J) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 24, 2005.

TRD-200500855
Trace Finley
Policy Director, General Land Office
School Land Board
Earliest possible date of adoption: April 10, 2005
For further information, please call: (512) 305-8598

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER A. REGULATIONS GOVERNING HAZARDOUS MATERIALS

37 TAC §4.1

The Texas Department of Public Safety proposes amendments to §4.1, concerning Regulations Governing Hazardous Materials. Amendment to §4.1 subsection (a) is necessary in order to ensure that the Federal Hazardous Material Regulations, incorporated by reference in the section, reflects all amendments and interpretations issued through April 1, 2005.

A second amendment to §4.1 is necessary in order to delete the requirement of reporting a hazardous material incident to the department's Motor Carrier Bureau.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to ensure to the public greater compliance by motor carriers with all of the statutes and regulations pertaining to the safe operation of commercial vehicles in this state. There is no adverse economic impact anticipated for individuals, small businesses, or micro-businesses.

Comments on the proposal may be submitted to Mark Rogers, Major, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2116.

The amendments are proposed pursuant to Texas Government Code, §411.018, which authorizes the director to adopt all or part of the federal hazardous materials rules by reference; and Texas Transportation Code, §644.051, which authorizes the director to adopt all or part of the federal safety regulations by reference.

Texas Government Code, §411.018 and Texas Transportation Code, §644.051 are affected by this proposal.

§4.1. Transportation of Hazardous Materials.

(a) The director of the Texas Department of Public Safety incorporates, by reference, the Federal Hazardous Materials Regulations, Title 49, Code of Federal Regulations, Parts 107 (Subpart G), 171 - 173, 177, 178, and 180, including all interpretations thereto, for commercial vehicles operated in intrastate, interstate, or foreign commerce, as amended through April [~~October~~] 1, 2005 [~~2004~~]. All other references in this section to the Code of Federal Regulations also refer to amendments and interpretations issued through April [~~October~~] 1, 2005 [~~2004~~].

(b) Explanations and Exceptions.

(1) Certain terms when used in the federal regulations as adopted in subsection (a) of this section will be defined as follows:

(A) the definition of motor carrier will be the same as that given in Texas Transportation Code, §643.001(6);

(B) hazardous material shipper means a consignor, consignee, or beneficial owner of a shipment of hazardous materials;

(C) interstate or foreign commerce will include all movements by commercial motor vehicle, both interstate and intrastate, over the streets and highways of this state;

(D) department means the Texas Department of Public Safety;

(E) regional highway administrator means the director of the Texas Department of Public Safety or the designee of the director;

(F) farm vehicle means any vehicle or combination of vehicles controlled and/or operated by a farmer or rancher being used to transport agriculture products, farm machinery, and farm supplies to or from a farm or ranch; and

(G) private carrier means any person not included in the terms "common carrier by motor vehicle" or "contract carrier by motor vehicle" who transports by commercial motor vehicle property of which the person is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent or bailment, or in furtherance of commerce.

[~~(2) Except as provided in paragraph (5) of this subsection concerning the reporting of hazardous materials incidents, the federal hazardous materials regulations, adopted herein, will apply to vehicles transporting hazardous materials as a cargo or part of a cargo when operated upon the streets and highways of this state.~~]

(2) [~~(3)~~] All references in Title 49, Code of Federal Regulations, Parts 107 (Subpart G), 171 - 173, 177, 178, and 180 made to other modes of transportation, other than by motor vehicles operated on streets and highways of this state, will be excluded and not adopted by this department.

(3) [~~(4)~~] Regulations adopted by this department, including the federal motor carrier safety regulations, will apply to farm tank trailers used exclusively to transport anhydrous ammonia from the dealer to the farm. The usage of non-specification farm tank trailers by motor carriers to transport anhydrous ammonia must be in compliance with Title 49, Code of Federal Regulations, §173.315(m).

(4) [~~(5)~~] The reporting of hazardous material incidents as required by Title 49, Code of Federal Regulations, §171.15 and §171.16 for shipments of hazardous materials by highway [~~or rail~~] is adopted by the department. [~~Notices of the hazardous material incidents must be provided to the department's Motor Carrier Bureau, by telephone at (512) 424-2051 or fax at (512) 424-5712 and in writing to the Texas Department of Public Safety, Motor Carrier Bureau, Box 4087, Austin, Texas 78773-0522.~~]

(5) [~~(6)~~] Regulations adopted by this department, including the federal motor carrier safety regulations, will apply to an intrastate motor carrier transporting a flammable liquid petroleum product in a cargo tank. The usage of non-specification cargo tanks by motor carriers for the intrastate transportation of flammable liquid petroleum products must be in compliance with Title 49, Code of Federal Regulations, §173.8.

(6) [~~(7)~~] Regulations and exceptions adopted herein are applicable to all drivers and vehicles transporting hazardous materials in interstate, foreign, or intrastate commerce.

(7) [~~(8)~~] Nothing in this section shall be construed to prohibit an employer from requiring and enforcing more stringent requirements relating to safety of operation and employee safety and health.

(8) [~~(9)~~] Penalties assessed for violations of the regulations adopted herein will be based upon the provisions of Texas Transportation Code, Chapter 644, and §4.16 of this title (relating to Administrative Penalties, Payment, Collection and Settlement of Penalties).

(9) [~~(10)~~] A peace officer certified, in accordance with §4.13 of this title (relating to Authority to Enforce, Training and Certificate Requirements), to enforce the Federal Hazardous Material Regulations, as adopted in this section, may declare a vehicle out-of-service using the North American Standard Hazardous Materials Out-of-State Criteria as a guideline.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 22, 2005.

TRD-200500801
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: April 10, 2005
For further information, please call: (512) 424-2135

SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

37 TAC §§4.11, 4.13 - 4.19

The Texas Department of Public Safety proposes amendments to §§4.11, and 4.13 - 4.19, concerning Regulations Governing Transportation Safety.

The amendment to §4.11 subsection (a) is necessary in order to ensure that the Federal Motor Carrier Safety Regulations, incorporated by reference in the section, reflects all amendments and interpretations issued through April 1, 2005. An additional amendment to §4.11 reformats subsection (c)(2) - (7) relating to applicability of regulations.

The amendment to §4.13 is necessary in order to clarify the initial training and certifications requirements for peace officers certified under this section.

The amendment to §4.14 is necessary in order to clarify what is required of certain municipalities and counties when an officer's certification status changes. Further amendment to the section reflects a change being made to the Memorandum of Understanding process utilized by the department for municipal and county certification requirements.

The amendment to §4.15 is necessary in order to further clarify department procedures for assigning motor carrier safety ratings in the Safety Audit Program and to establish a standard for judicial review of this process.

The amendment to §4.16 is necessary in order to clarify department procedures for the collection of administrative penalties assessed and the issuance of impoundment orders.

The amendment to §4.17 is necessary in order to clarify department procedures for conducting informal hearings, to describe when an administrative penalty becomes a final agency decision, and to establish a standard for judicial review of this process.

The amendment to §4.18 is necessary in order to clarify how an out-of-service order issued under this subchapter becomes a final agency decision, and to establish a standard for judicial review of this process.

The amendment to §4.19 is necessary in order to make this subsection consistent with the associated statute, Texas Transportation Code, §643.252.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rules will be to ensure to the public greater compliance by motor carriers with all of the statutes and regulations pertaining to the safe operation of commercial vehicles in this state. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

Comments on the proposal may be submitted to Mark Rogers, Major, Texas Department of Public Safety, Texas Highway Patrol Division, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2116.

The amendments are proposed pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the

director to adopt all or part of the federal safety regulations by reference.

Texas Transportation Code, §644.051 is affected by this proposal.

§4.11. General Applicability and Definitions.

(a) General. The director of the Texas Department of Public Safety incorporates, by reference, the Federal Motor Carrier Safety Regulations, Title 49, Code of Federal Regulations, Parts 40, 380, 382, 385, 386, 387, 390 - 393, and 395 - 397 including all interpretations thereto, as amended through April 1, 2005 [~~October 1, 2004~~]. All other references in this subchapter to the Code of Federal Regulations also refer to amendments and interpretations issued through April 1, 2005 [~~October 1, 2004~~]. The rules adopted herein are to ensure that:

(1) a commercial motor vehicle is safely maintained, equipped, loaded, and operated;

(2) the responsibilities imposed on a commercial motor vehicle's operator do not impair the operator's ability to operate the vehicle safely;

(3) the physical condition of a commercial motor vehicle's operator enables the operator to operate the vehicle safely; and,

(4) the minimum levels of financial responsibility required to be maintained by motor carriers of property or passengers operating commercial motor vehicles in interstate, foreign, or intrastate commerce.

(b) Terms. Certain terms, when used in the federal regulations as adopted in subsection (a) of this section, will be defined as follows:

(1) the definition of motor carrier will be the same as that given in Texas Transportation Code, §643.001(6);

(2) hazardous material shipper means a consignor, consignee, or beneficial owner of a shipment of hazardous materials;

(3) interstate or foreign commerce will include all movements by motor vehicle, both interstate and intrastate, over the streets and highways of this state;

(4) department means the Texas Department of Public Safety;

(5) director means the director of the Texas Department of Public Safety or the designee of the director;

(6) regional highway administrator means the director of the Texas Department of Public Safety;

(7) farm vehicle means any vehicle or combination of vehicles controlled and/or operated by a farmer or rancher being used to transport agriculture commodities, farm machinery, and farm supplies to or from a farm or ranch;

(8) commercial motor vehicle has the meaning assigned by Texas Transportation Code, §548.001(1) if operated intrastate; commercial motor vehicle has the meaning assigned by Title 49, Code of Federal Regulations, Part 390.5 if operated interstate;[~~.~~]

(9) foreign commercial motor vehicle has the meaning assigned by Texas Transportation Code, §648.001;

(10) agricultural commodity is defined as an agricultural, horticultural, viticultural, silvicultural, or vegetable product, bees and honey, planting seed, cottonseed, rice, livestock or a livestock product, or poultry or a poultry product that is produced in this state, either in its natural form or as processed by the producer, including wood chips. The term does not include a product which has been stored in a facility not owned by its producer;

(11) planting and harvesting seasons are defined as January 1 to December 31; and[~~,~~]

(12) producer is defined as a person engaged in the business of producing or causing to be produced for commercial purposes an agricultural commodity. The term includes the owner of a farm on which the commodity is produced and the owner's tenant or sharecropper.

(c) Applicability.

(1) The regulations shall be applicable to the following vehicles:

(A) a vehicle or combination of vehicles with an actual gross weight, a registered gross weight, or a gross weight rating in excess of 26,000 pounds when operating intrastate;

(B) a farm vehicle or combination of farm vehicles with an actual gross weight, a registered gross weight, or a gross weight rating of 48,000 pounds or more when operating intrastate;

(C) a vehicle designed or used to transport more than 15 passengers, including the driver; and[~~,~~]

(D) a vehicle transporting hazardous material requiring a placard.

(E) [~~(2)~~] a motor carrier transporting household goods for compensation in intrastate commerce in a vehicle not defined in Texas Transportation Code, §548.001(1) is subject to the record keeping requirements in Title 49, Code of Federal Regulations, Part 395 and the hours of service requirements specified in this subchapter.

(F) [~~(3)~~] a foreign commercial motor vehicle that is owned or controlled by a person or entity that is domiciled in or a citizen of a country other than the United States.

(G) [~~(4)~~] a contract carrier transporting the operating employees of a railroad on a road or highway of this state in a vehicle designed to carry 15 or fewer passengers.

(2) [~~(5)~~] The regulations contained in Title 49, Code of Federal Regulations, Part 392.9a, and all interpretations thereto, are applicable to motor carriers operating in intrastate commerce and to for-hire interstate motor carriers exempt from economic regulation. The term "registration" as used in Title 49, Code of Federal Regulations, Part 392.9a, for the motor carriers described in this paragraph, shall mean compliance with the registration requirements found in Texas Transportation Code, Chapter 643, for vehicles operating in intrastate commerce, or Texas Transportation Code, Chapters 643 or 645, for for-hire interstate motor carriers exempt from economic regulation. For purposes of enforcement of this paragraph, peace officers certified to enforce this chapter, shall verify that a motor carrier is not registered, as required in Texas Transportation Code, Chapters [~~Chapter~~] 643 or 645, before placing a motor carrier out-of-service. Motor carriers placed out-of-service under Title 49, Code of Federal Regulations, Part 392.9a may request a review under § [~~subsection~~] 4.18 of this chapter. All costs associated with the towing and storage of a vehicle and load declared out-of-service under subsection (c)(2) [~~(5)~~] shall be the responsibility of the motor carrier and not the department or the State of Texas.

(3) [~~(6)~~] All regulations contained in Title 49, Code of Federal Regulations, Parts 40, 380, 382, 385, 386, 387, 390 - 393 and 395 - 397, and all interpretations thereto pertaining to interstate drivers and vehicles are also adopted except as otherwise excluded.

(4) [~~(7)~~] Nothing in this section shall be construed to prohibit an employer from requiring and enforcing more stringent requirements relating to safety of operation and employee health and safety.

§4.13. Authority to Enforce, Training and Certificate Requirements.

(a) Authority to Enforce.

(1) An officer of the department may stop, enter or detain on a highway or at a port of entry a motor vehicle that is subject to Texas Transportation Code, Chapter 644.

(2) A non-commissioned employee of the department that is trained and certified to enforce the federal safety regulations may stop, enter or detain at a fixed-site facility, or at a port of entry, a motor vehicle that is subject to Texas Transportation Code, Chapter 644.

(3) An officer of the department or a non-commissioned employee of the department that is trained and certified to enforce the federal safety regulations may prohibit the further operation of a vehicle on a highway or at a port of entry if the vehicle or operator of the vehicle is in violation of Texas Transportation Code, Chapter 522, or a federal safety regulation or rule adopted under Texas Transportation Code, Chapter 644, by declaring the vehicle or operator out-of-service using the North American Standard Out-of-Service Criteria as a guideline.

(4) Municipal police officers from any of the following Texas cities meeting the training and certification requirements contained in subsection (b) of this section and certified by the department may stop, enter or detain on a highway or at a port of entry within the municipality a motor vehicle subject to Texas Transportation Code, Chapter 644:

(A) a municipality with a population of 100,000 or more;

(B) a municipality with a population of 25,000 or more, any part of which is located in a county with a population of two million or more;

(C) a municipality any part of which is located in a county bordering the United Mexican States; or[,]

(D) a municipality with a population of less than 25,000, any part of which is located in a county with a population of 2.4 million and that contains or is adjacent to an international port.

(5) A sheriff, or deputy sheriff from any of the following Texas counties meeting the training and certification requirements contained in subsection (b) of this section and certified by the department, may stop, enter or detain on a highway or at a port of entry within the county a motor vehicle subject to Texas Transportation Code, Chapter 644:

(A) a county bordering the United Mexican States, or

(B) a county with a population of 2.2 million or more.

(6) A certified peace officer from an authorized municipality or county may prohibit the further operation of a vehicle on a highway or at a port of entry within the municipality or county if the vehicle or operator of the vehicle is in violation of Texas Transportation Code, Chapter 522, or a federal safety regulation or rule adopted under Texas Transportation Code, Chapter 644, by declaring the vehicle or operator out-of-service using the North American Standard Out-of-Service Criteria as a guideline.

(b) Training and Certification Requirements.

(1) Minimum standards. Certain peace officers from the municipalities and counties specified in subsection (a) of this section before being certified to enforce this article must meet the following standards:

(A) successfully complete the North American Standard Roadside Inspection Course; and

(B) participate in an on-the-job training program following each course with a certified officer and perform a minimum of 30 level one inspections.

(2) Hazardous materials. Certain peace officers from the municipalities and counties specified in subsection (a) of this section and eligible to enforce the Hazardous Materials Regulations must:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete a Basic Hazardous Materials Course; and

(C) participate in an on-the-job training program following each course with a certified officer and perform a minimum of 16 level one inspections on vehicles containing non-bulk quantities of hazardous materials.

(3) Cargo Tank Specification. Certain peace officers from the municipalities and counties specified in subsection (a) of this section and eligible to enforce the Cargo Tank Specification requirements must:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete a Basic Hazardous Materials Course;

(C) successfully complete a Cargo Tank Inspection Course; and[.]

(D) participate in an on-the-job training program following each course with a certified officer and perform a minimum of 16 level one inspections on vehicles transporting hazardous materials in cargo tanks.

(4) Motor Coach. Certain peace officers from the municipalities and counties specified in subsection (a) of this section and eligible to enforce motor coach requirements must:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete a Motor Coach Inspection Course; and

(C) participate in an on-the-job training program following each course with a certified officer and perform a minimum of 8 [24] level I [or V] inspectionson motor coaches/buses.

(5) Training provided by the department. When the training is provided by the Texas Department of Public Safety, the department shall collect fees in an amount sufficient to recover from municipalities and counties the cost of certifying its peace officers. The fees shall include:

(A) the per diem costs of the instructors established in accordance with the Appropriations Act regarding in-state travel;

(B) the travel costs of the instructors to and from the training site;

(C) all course fees charged to the department;

(D) all costs of supplies; and

(E) the cost of the training facility, if applicable.

(6) Training provided by other training entities. A public or private entity desiring to train police officers in the enforcement of the Federal Motor Carrier Safety Regulations must:

(A) submit a schedule of the courses to be instructed;

(B) submit an outline of the subject matter in each course;

(C) submit a list of the instructors and their qualifications to be used in the training course;

(D) submit a copy of the examination;

(E) submit an estimate of the cost of the course;

(F) receive approval from the director prior to providing the training course;

(G) provide a list of all peace officers attending the training course, including the peace officer's name, rank, agency, social security number, dates of the course, and the examination score; and

(H) receive from each peace officer, municipality, or county the cost of providing the training course(s).

(c) Maintaining Certification.

(1) To maintain certification to conduct inspections and enforce the federal safety regulations, a peace officer must:

(A) Successfully complete the required annual certification training; and[.]

(B) Perform a minimum of 32 Level I or Level V inspections per calendar year.

(C) If the officer is certified to perform hazardous materials inspections, at least eight inspections (Levels I, II or V [or II]) shall be conducted on vehicles containing non-bulk quantities of hazardous materials.

(D) If the officer is certified to perform cargo tank/bulk packaging inspections, at least eight inspections (Levels I, II or V [or II]) shall be conducted on vehicles transporting hazardous materials in cargo tanks.

(E) If the officer is certified to perform motor coach [motorcoach]/bus inspections, at least eight of the inspections (Levels I or V) shall be conducted on motor coaches [motorcoaches]/buses.

(2) In the event an officer does not meet the requirements of subsection (c) of this section, his or her certification shall be suspended.

(3) To be recertified, after suspension, an officer shall pass the applicable examinations which may include the North American Standard Inspection, the General Hazardous Materials Inspection Course, the Cargo Tank/Bulk Packaging Inspection Course, and/or the Motor Coach [Motorcoach]/Bus Inspection Course and repeat the specified number of inspections with a certified officer.

(4) Any officer failing any examination, or failing to successfully demonstrate proficiency in conducting inspections after allowing any certification to lapse will be required to repeat the entire training process as outlined in subsection (b) of this section.

§4.14. Municipal and County Certification Requirements.

(a) Certain peace officers from an authorized municipality or county may be trained and certified to enforce the federal safety regulations provided the municipality or county:

(1) executes a Memorandum of Understanding with the department concerning the working policies and procedures of the inspection program whereby the resources of all agencies will be maximized, duplication of efforts will be minimized, and uniformity in the inspection program will be maintained;

(2) implements a program that ensures their officers are conducting the inspections following the guidelines approved by the department;

(3) implements a program that ensures their officers perform the required number of inspections annually and successfully complete the required annual certification training to maintain the officers' certification;

(4) agrees to immediately suspend, from performing commercial vehicle inspection and enforcement activities, authorized in this chapter, [immediately] any officer that fails to maintain their certification or that fails to perform the inspections following the guidelines approved by the department;

(5) agrees to notify the department within 10 days of a change in an officer's certification and provides a list to the department by January 31st of each year of the officers that have been suspended and are no longer certified;

(6) provides all roadside inspection data to the department through electronic systems that are compatible with the department's system within 15 business days of the inspection; and[.]

(7) agrees to forward crash reports involving commercial motor vehicles to the department no later than 30 days after the date of completion of the crash investigation.

(b) Substantial non compliance with the provisions of the Memorandum of Understanding or the training, officer certification, or data-sharing requirements by the municipality or county, will constitute grounds to decertify the municipality's or county's authority to enforce the federal safety regulations.

(c) The failure of a municipality or county to show activity to the department within a six (6) month period will constitute grounds to decertify the municipality or county.

(d) Each municipality or county that has peace officers trained and certified to enforce the federal safety regulations shall be required to update and renew their Memorandum of Understanding with the department every two years on a staggered schedule to be determined by the department. If the initial Memorandum of Understanding with the department does not have an effective date shown, then the effective date shall be the date of acceptance by the department.

§4.15. Safety Audit Program.

(a) [Safety Audit Program.] The rules in this subsection, as authorized by Texas Transportation Code, §644.155, establish procedures to determine the safety fitness of motor carriers, assign safety ratings, take remedial actions when necessary, assess administrative penalties when required, and prohibit motor carriers receiving a safety rating of "unsatisfactory" from operating a commercial motor vehicle. The department will use the Compliance Review Audit to determine the safety fitness of motor carriers and to assign safety ratings. The safety fitness determination will be assessed on intrastate motor carriers and the intrastate operations of interstate motor carriers based in Texas.

(1) Definitions specific to the Safety Audit Program are as follows:

(A) Compliance Review means an on-site examination of motor carrier operations to determine whether a motor carrier meets the safety fitness standard.

(B) Culpability means an evaluation of the blame worthiness of the violator's conduct or actions.

(C) Imminent Hazard means any condition of vehicle, employees, or commercial vehicle operations which is likely to result in serious injury or death if not discontinued immediately.

(D) Satisfactory Safety Rating means that a motor carrier has in place and functioning adequate safety management controls to meet the safety fitness standard prescribed in Title 49, Code of Federal Regulation, Part 385.5 and the state equivalents contained in Texas Transportation Code Chapters 522 and 644, and 37 TAC, Chapter 4. Safety management controls are adequate if they are appropriate for the size and type of operation of the particular motor carrier.

(E) Conditional Safety Rating means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard that could result in the occurrences listed in Title 49, Code of Federal Regulations, Part 385.5(a) through (k) and the state equivalents contained in Texas Transportation Code Chapters 522 and 644, and 37 TAC, Chapter 4.

(F) Unsatisfactory Safety Rating means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard which has resulted in occurrences listed in Title 49, Code of Federal Regulations, Part 385.5(a) through (k) and the state equivalents contained in Texas Transportation Code Chapters 522 and 644, and 37 TAC, Chapter 4.

[~~(G) For the purposes of collection of the administrative penalty, Final Departmental Decision is defined as:~~]

[~~*(i)* the most recent claim letter issued to a motor carrier who fails to pay or becomes delinquent in the payment of an administrative penalty as outlined in §4.16 of this title (relating to Administrative Penalties, Payment, Collection and Settlement of Penalties)~~]

[~~*(ii)* the most recent claim letter issued to a motor carrier who fails to request an informal hearing or an administrative hearing within 20 business days of receipt of the Notice of Claim; or~~]

[~~*(iii)* a Final Order issued from an administrative hearing as outlined in this subchapter.~~]

(G) [~~(H)~~] For the purposes of safety ratings, Final Departmental Decision is defined as:

(i) the letter notifying the carrier of a satisfactory safety rating, issued under paragraph (4)(D)[~~(ii)~~] of this subsection [~~section~~];

(ii) the letter notifying the motor carrier of a conditional safety rating on the expiration of the time period in paragraph (4)(D)(ii) of this subsection [~~section~~], unless this changed earlier as a result of the department granting a request to change the safety rating or a departmental review;

(iii) the letter notifying the motor carrier of a final unsatisfactory safety rating issued under paragraph (4)(D)(iii) of this subsection; or

(iv) the letter notifying the motor carrier of a decision on a safety rating as a result of a request for a change of the safety rating or a departmental review.

(2) Inspection of Premises.

(A) Authority to Inspect. An officer or a non-commissioned employee of the department who has been certified by the director may enter a motor carrier's premises to inspect lands, buildings, and equipment and copy or verify the correctness of any records, reports or other documents required to be kept or made pursuant to the regulations adopted by the director in accordance with Texas Transportation Code, §644.155.

(B) Entry of Premises. The officer or employee of the department may conduct the inspection:

(i) at a reasonable time;

(ii) on stating the purpose of the inspection; and

(iii) by presenting to the motor carrier;

(I) appropriate credentials; and

(II) a written statement from the department to the motor carrier indicating the officer's or employee's authority to inspect.

(C) Civil and Criminal Penalties for Refusal to Allow Inspection.

(i) A person who does not permit an inspection authorized under Texas Transportation Code, §644.104, is liable to the state for a civil penalty not to exceed $1,000. The director may request that the attorney general sue to collect the penalty in the county in which the violation is alleged to have occurred or in Travis County.

(ii) The civil penalty is in addition to the criminal penalty provided by Texas Transportation Code, §644.151.

(iii) Each day a person refuses to permit an inspection constitutes a separate violation for purposes of imposing a penalty.

(3) Compliance Review Audits. A Compliance Review will be conducted based upon the following criteria:

(A) unsatisfactory safety assessment factor evaluations;

(B) written complaints concerning unsafe operation of commercial motor vehicles which are substantiated by documentation. Complaints for the purpose of this criterion include involvement in a fatality accident or the receipt of a 24-hour out-of-service notification based on violation(s) of Title 49, Code of Federal Regulations, Parts 392.4 or 392.5 or Texas Transportation Code, §522.101;

(C) follow-up investigations of motor carriers that have been the subject of an enforcement action, an administrative penalty, or the assessment of an Unsatisfactory Safety Rating from the immediately previous Compliance Review;

(D) requests from the legislature and state or federal agencies;

(E) request for a safety rating determination or a change to a safety rating determination; or

(F) a hazardous material incident as described in §4.1(b)(4)[~~(5)~~] of this title (relating to Transportation of Hazardous Materials).

(4) Safety Fitness Rating.

(A) A safety fitness rating is based on the degree of compliance with the safety fitness standard for motor carriers.

(B) A safety rating will be determined following a compliance review using the factors prescribed in Title 49, Code of Federal Regulations, Part 385.7. The following safety ratings will be assigned:

(i) Satisfactory Safety Rating;

(ii) Conditional Safety Rating; or

(iii) Unsatisfactory Safety Rating.

(C) The provisions of Title 49, Code of Federal Regulations, Part 385.13 relating to "unsatisfactory rated motor carriers; prohibition on transportation; ineligibility for Federal contracts" is hereby adopted by the department and is applicable to intrastate motor carriers except that intrastate motor carriers transporting more than 15 passengers or hazardous materials are prohibited from operation on the 61st

calendar day after notice of the proposed unsatisfactory safety rating; all other intrastate motor carriers are prohibited from operation on the 76th calendar day after notice of the proposed unsatisfactory safety rating.

(D) The department will provide written notification to the motor carrier of the assigned safety rating within 30 business days of the close out date of the compliance review.

(i) Notice of a satisfactory safety rating will be sent by regular U.S. Mail, or by personal delivery, and is final upon receipt or mailing [~~notice within 30 business days of the compliance review~~].

(ii) Notice of a proposed conditional safety rating shall be sent by certified mail, registered mail, personal delivery, or another manner of delivery that records the receipt of the notice by the person responsible, and will include a list of those items for which immediate corrective action must be taken. Unless changed by the department following a request for a change of safety rating or a department review, the conditional safety rating will become final without further notice on the 61st calendar day after notice of the proposed conditional safety rating for motor carriers transporting more than 15 passengers or hazardous materials requiring placarding under Part 172, Subpart F, of Title 49, Code of Federal Regulations, and on the 76th calendar day after notice of the proposed conditional rating for all other motor carriers. If the motor carrier requests a change of safety rating or a departmental review more than 15 days after the notice of proposed conditional safety rating, the conditional safety rating may become final before the department can complete its review.

(iii) Notice of a proposed [~~an~~] unsatisfactory safety rating shall be sent by certified mail, registered mail, personal delivery, or another manner of delivery that records the receipt of the notice by the person responsible, and will include a list of those items for which immediate corrective action must be taken. Within 5 business days of the expiration of the time periods set out in paragraph (4)(C) of this subsection [~~section~~], the department will provide written notification of the final unsatisfactory safety rating and an order to cease all intrastate transportation, as provided in Title 49, Code of Federal Regulations, Part 385.13, by certified mail, registered mail, personal delivery, or another manner of delivery that records the receipt of the notice by the person responsible. If the motor carrier requests a change of safety rating or a departmental review more than 15 days after the notice of proposed unsatisfactory safety rating, the unsatisfactory safety rating may become final before the department can complete its review.

(E) In addition to any criminal penalties provided by statute, a motor carrier assessed an unsatisfactory safety rating who continues to operate in violation of the notifications to cease operations under Title 49, Code of Federal Regulations, Part 385.13 will be subject to a civil suit filed by the attorney general from a request from the director of the Texas Department of Public Safety. Each day of operation constitutes a separate violation.

(F) A request for a change in or a departmental review of a safety rating must be submitted in writing to: Texas Department of Public Safety, Manager-Motor Carrier Bureau, P.O. Box 4087, Austin, Texas 78773-0521. Such request(s) must meet the requirements provided for in this subsection.

(G) Change to Safety Rating based on Corrective Actions. A motor carrier that has taken action to correct the deficiencies that resulted in a proposed or final rating of "conditional" or "unsatisfactory" may request a rating change at any time.

(i) The motor carrier must base its request upon evidence that it has taken corrective actions and that its operations currently meet the safety standards and factors specified in Title 49 Code of Federal Regulations Parts 385.5 and 385.7, and equivalent state regulations contained in Texas Transportation Code Chapters 522 and 644, and 37 TAC, Chapter 4. The request must include a written description of corrective actions taken, and other documentation the carrier wishes the department to consider.

(ii) The department will make a final determination on the request for change based upon the documentation the motor carrier submits, a streamlined compliance review and any additional relevant information. The review will be conducted by the director's designee(s); the streamlined compliance review will be conducted by a field compliance review investigator.

(iii) The department will perform reviews of requests made by motor carriers with a proposed or final "unsatisfactory" or "conditional" safety rating in the following time periods after receipt of the motor carrier's request: within 30 calendar days for motor carriers transporting passengers in commercial motor vehicles or placardable quantities of hazardous materials; or within 45 calendar days for all other motor carriers.

(iv) The filing of a request for a change to a proposed or final safety rating under this section does not stay the 60 calendar day period specified in this subsection for motor carriers transporting passengers or hazardous materials. If the motor carrier has submitted evidence that corrective actions have been taken pursuant to the Federal Motor Carrier Safety Regulations and state regulations and the department cannot make a final determination within the 60 calendar day period, the period before the proposed safety rating becomes final may be extended for up to 10 calendar days at the discretion of the department.

(v) The department may allow a motor carrier with a proposed rating of "unsatisfactory" (except those transporting passengers in commercial motor vehicles or placardable quantities of hazardous materials) to continue to operate in intrastate commerce for up to 60 calendar days beyond the 75 calendar days specified in the proposed rating, if the department determines that the motor carrier is making a good faith effort to improve its safety status. This additional period would begin on the 76th day after the date of the notice of the proposed "unsatisfactory" rating.

(vi) If the department determines that the motor carrier has taken the corrective actions required and that its operations currently meet the safety standard and factors specified in Title 49, Code of Federal Regulations Parts 385.5 and 385.7, and equivalent state regulations contained in Texas Transportation Code Chapters 522 and 644, and 37 TAC, Chapter 4, the department will notify the motor carrier in writing of its upgraded safety rating. An upgraded safety rating is final upon notification.

(vii) If the department determines that the motor carrier has not taken all the corrective actions required, or that its operations still fail to meet the safety standard and factors specified in Title 49, Code of Federal Regulations Parts 385.5 and 385.7, and equivalent state regulations contained in Texas Transportation Code Chapters 522 and 644, and 37 TAC, Chapter 4, the department will notify the motor carrier in writing. Any extension of the time period before an unsatisfactory safety rating becomes effective under paragraph (4)(G)(iv) or (v) of this subsection [~~section~~] will expire upon receipt of this notice.

(viii) Any motor carrier whose request for change to a safety rating is denied in accordance with this subsection may request a departmental review under the procedures of paragraph (4)(H) of this subsection [~~section~~]. The motor carrier must make the request within 90 calendar days of the denial of the request for a rating change. If the proposed rating has become final, it shall remain in effect during the period of any departmental review.

(H) Departmental Review of Safety Rating. A motor carrier may request the department to conduct a departmental review if it believes the department has committed an error in assigning its proposed safety rating in accordance with Title 49, Code of Federal Regulations, Part 385.15(c), Texas Transportation Code Chapter 644, or 37 TAC, Chapter 4 or its final safety rating in accordance with Title 49, Code of Federal Regulations, Part 385.11(b), Texas Transportation Code Chapter 644, or 37 TAC, Chapter 4.

(i) The motor carrier's request must explain the error it believes the department committed in issuing the safety rating. The motor carrier must include a list of all factual and procedural issues in dispute, and any information or documents that support its argument.

(ii) If a motor carrier has received a notice of a proposed conditional or unsatisfactory safety rating, it should submit its request within 15 business days from the date of the notice. This time frame will allow the department to issue a written decision before the safety rating becomes final and any prohibitions outlined in paragraph (4)(C) of this subsection [~~section~~] take effect. Failure to request within this 15 business day period may prevent the department from issuing a final decision before such prohibitions take effect.

(iii) The motor carrier must make a request for a [~~an~~] departmental review within 90 calendar days of either the proposed or final safety rating issued in accordance with this subsection, or within 90 calendar days after denial of a request for a change in a safety rating in accordance with paragraph (4)(G) of this subsection [~~section~~].

(iv) The department may ask the motor carrier to submit additional data and attend a conference in Austin, Texas to discuss the safety rating. If the motor carrier does not provide the information requested or does not attend the conference, the department may dismiss its request for review. The review will be conducted by the director's designee(s).

(v) The department will notify the motor carrier in writing of its decision following the departmental review. The department will complete the review within 30 calendar days after receiving a request from a hazardous materials or passenger motor carrier that has received a proposed or final "unsatisfactory" or "conditional" safety rating; or within 45 calendar days after receiving a request from any other motor carrier that has received a proposed or final "unsatisfactory" or "conditional" safety rating.

(I) [~~(vi)~~] A final safety rating [~~The decision~~] constitutes a final agency decision. Any review of such decision is subject to Texas Government Code Chapter 2001. Judicial review is subject to the substantial evidence rule under Texas Government Code, §2001.174.

(b) Release of Safety Rating Information.

(1) [~~(I)~~] The safety rating assigned to a motor carrier will be made available to the public upon request.

(2) [~~(J)~~] Requests should be addressed to the Texas Department of Public Safety, Motor Carrier Bureau, Box 4087, Austin, Texas 78773-0521. All requests for disclosure of safety rating must be made in writing and will be processed under the Texas Public Information Act.

§4.16. Administrative Penalties, Payment, Collection, and Settlement of Penalties.

(a) Administrative Penalties.

(1) The compliance review may result in the initiation of an enforcement action based upon the number and degree of seriousness of the violations discovered during the review as well as those factors listed in Title 49, Code of Federal Regulations, Part 385.7. As a result of the enforcement action, the department may impose an administrative penalty against a motor carrier who violates a provision of the Texas Transportation Code, Title 7, Subtitle B, Chapter 522 (relating to Commercial Driver's License), Subtitle C, Chapters 541 - 600 (relating to the Rules of the Road), and Subtitle F, Chapter 644 (relating to Commercial Motor Vehicles), including any amendments not codified in the Texas Transportation Code. Each of these provisions relates to the safe operation of a commercial motor vehicle under Texas Transportation Code, §644.153(b).

(2) The department shall have discretion in determining the appropriate amount of the administrative penalty assessed for each violation, and adopts the Federal Uniform Fine Assessment Program as a method of determining penalty assessment. A penalty under this section may not exceed the maximum penalty provided for a violation of a similar federal safety regulation.

(3) The amount of the administrative penalty shall be determined by taking into account the following factors:

(A) For violations other than those under the hazardous material regulations:

(i) nature of the violation;

(ii) circumstances of the violation;

(iii) extent of the violation;

(iv) gravity of the violation;

(v) degree of culpability;

(vi) history of prior offenses;

(vii) ability to pay;

(viii) the amount necessary to deter future violations;

(ix) effect on ability to continue to do business; and

(x) such other matters as justice and public safety may require.

(B) For hazardous material violations, the factors detailed in paragraph (3)(A) of this subsection [~~section~~], are considered in addition to the following factors:

(i) any good faith effort to comply with the applicable requirements; and

(ii) any economic benefit resulting from the violation.

(4) The department will send a Notice of Claim to the person(s), firm, or business in violation of this subchapter by certified mail, return receipt requested, by personal service, or another manner of delivery that records the receipt of the notice by the person responsible requiring a response within 20 business days. The notice will contain the following language in bold, large face type: "FAILURE TO PAY THIS CLAIM OR RESPOND, AS SPECIFIED IN THE NOTICE OF CLAIM, WITHIN 20 BUSINESS DAYS WILL RESULT IN THIS NOTICE OF CLAIM BEING DEEMED A 'FINAL DEPARTMENT DECISION.' A PERSON WHO IS SUBJECT TO AN ADMINISTRATIVE PENALTY IMPOSED BY THE DEPARTMENT UNDER TEXAS TRANSPORTATION CODE, §644.153 IS REQUIRED TO PAY THE ADMINISTRATIVE PENALTIES OR RESPOND TO THE DEPARTMENT'S NOTICE OF CLAIM. A PERSON WHO FAILS TO PAY, OR BECOMES DELINQUENT IN THE PAYMENT OF THE ADMINISTRATIVE PENALTIES IMPOSED BY THE DEPARTMENT UNDER TEXAS TRANSPORTATION CODE, §644.153 SHALL NOT OPERATE

OR DIRECT THE OPERATION OF A COMMERCIAL MOTOR VEHICLE ON THE HIGHWAYS OF THIS STATE UNTIL SUCH TIME AS THE ADMINISTRATIVE PENALTIES HAVE BEEN REMITTED TO THE DEPARTMENT."

(b) Payment, Collection and Settlement of Administrative Penalty.

(1) Payment. A person who is subject to an administrative penalty imposed by the department as authorized by Texas Transportation Code §644.153(c) is required to pay the administrative penalty. If payment of costs, fees, expenses, and reasonable and necessary attorney's fees incurred by the state has been ordered, any payment of less than the full amount owed will be applied first to the costs, fees, expenses and attorney's fees, then the balance of the payment, if any, will be applied to the administrative penalty. The administrative penalty may be paid through one of the following options:

(A) Full Payment. Full payment of the administrative penalty in the form of a check, cashier's check, or money order made payable to the Department of Public Safety shall be submitted to the Texas Department of Public Safety, Attn: Motor Carrier Bureau, MSC 0522, 6200 Guadalupe, Building P, Austin, Texas 78752-4019.

(B) Installment Payments.

(i) A person(s), firm, or business may, upon approval of the director or the director's designee, be allowed to make installment payments of an administrative penalty, costs, fees, expenses, and reasonable and necessary attorney's fees incurred by the state upon submission of adequate proof of inability to pay the full amount of the claim. An application shall be submitted on a form approved by the department.

(ii) The person(s), firm, or business requesting the installment agreement must submit adequate documentation to support the request and make all relevant financial records of the person(s), firm, or business available to the department for inspection and verification.

(iii) In the event of a default of the installment agreement by the person(s), firm, or business, then the remaining balance of the installment agreement will be due immediately.

(iv) Upon default under an installment agreement, or failure to respond to the notice of claim within 20 business days, the person(s), firm, or business is no longer eligible for installment payments.

(2) Non-Payment of Administrative Penalty. A person who fails to pay, or becomes delinquent in the payment of the administrative penalty imposed by the department as authorized by Texas Transportation Code, §644.153(c) shall not operate or direct the operation of a commercial motor vehicle on the highways of this state until such time as the administrative penalty has been remitted to the department. The department will make every effort to collect an administrative penalty once an enforcement action has been deemed as a Final Departmental Decision, including referring the administrative penalty to the Office of the Attorney General, or issuing an impoundment Order.

(A) Issuance of an Impoundment Order. Pursuant to Texas Transportation Code, §644.153(o) - (s), the department will issue an impoundment order for the impoundment of any commercial motor vehicle that is operated or directed by the person(s), firm, or business that fails to pay an administrative penalty issued under this subchapter.

(B) Timing and Content of Impoundment Order. The department shall issue an Impoundment Order if the person(s), firm, or business fails to respond as specified to the Notice of Claim within 20 business days, or becomes delinquent in the payment of the full amount under subsection (b)(1)(A) of this section or any installment payments under subsection (b)(1)(B) of this section when they become due. The Impoundment Order will contain the following information:

(i) Motor carrier's name, address, city, zip code and telephone number;

(ii) The motor carrier's Texas Department of Transportation, United States Department of Transportation, or Motor Carrier number, if any;

(iii) The amount of delinquent penalty assessment;

(iv) The date the Impoundment Order was issued;

(v) A contact number for the Motor Carrier Bureau;

(vi) Notice that impoundment will be lifted upon receipt of full payment of the administrative penalty at the Motor Carrier Bureau or the designated Commercial Vehicle Enforcement employee as described in paragraph (5)(C)(i) or (ii) of this subsection; and,

(vii) In bold, conspicuous letters, notice that the carrier is responsible for all costs of storage of the vehicle and its cargo, and towing.

(3) Prior to impounding any vehicle, the trooper shall verify the Impoundment Order is still valid. Verification can only be made by the Manager of the Motor Carrier Bureau or the Manager's designee during regular business hours, [~~Assistant Manager, Motor Carrier Bureau Attorney,~~] or via electronic inquiry into the Motor Carrier Bureau's Vehicle Impoundment Database after regular business hours [~~the Motor Carrier Compliance Audit Section Supervisor of the Motor Carrier Bureau~~]. If a trooper is unable to verify the Impoundment Order is in force, then the vehicle shall not be impounded.

(4) Once a vehicle is impounded, the trooper impounding the vehicle shall immediately ensure the motor carrier is notified of impoundment of the vehicle. The trooper will inform the motor carrier of the name, location, and telephone number of the vehicle storage facility where the vehicle is impounded, notice the vehicle will not be released until the administrative penalty has been paid, and a contact number for the Motor Carrier Bureau. When a vehicle is impounded after regular business hours, the trooper will notify the Motor Carrier Bureau as soon as possible but not later than the next regular business day.

(5) Release of Impounded Vehicles.

(A) To cancel the Impoundment Order and to release a vehicle from impoundment, the motor carrier shall pay the administrative penalty in full, including costs, fees, expenses, and reasonable and necessary attorney's fees incurred by the state.

(B) The payment of the administrative penalty must be for the full amount. The payment must be made by cashier's check or money order payable to the Texas Department of Public Safety.

(C) The payment can be made in one of two ways only:

(i) by sending it to the following address as indicated: Texas Department of Public Safety, Motor Carrier Bureau, MSC 0522, 6200 Guadalupe, Bldg. P, Austin, Texas 78752-4019, Attn: Accounting Clerk, Impoundment Notice; or

(ii) directly to the trooper at the time of the actual impoundment or to any Commercial Vehicle Enforcement employee at any department regional, district or sub-district office. If payment is made on an impounded vehicle after regular business hours, the trooper will notify the Motor Carrier Bureau as soon as possible but not later than the next regular business day.

(D) The impounded vehicle will be released and the impoundment order will be cancelled only upon receipt of payment as specified under paragraph (5)(C)(i) or (ii) of this subsection [~~or if the department refers the case to the attorney general for collection of the amount of the penalty~~].

§4.17. Notification and Hearing Processes.

(a) Notification.

(1) The department will notify a motor carrier of an enforcement action by the issuance of a claim letter as described in §4.16(a)(4) of this title (relating to Administrative Penalties, Payments, Collection and Settlement of Penalties).

(2) The notification may be submitted to the motor carrier's last known address as reflected in the records of the department by certified mail, return receipt requested, or personal service, or another manner of delivery that records the receipt of the notice by the person responsible. A notification sent by mail shall be presumed to have been received by the motor carrier five days after the date of the mailing.

(3) The motor carrier shall respond within 20 business days of receipt of the claim letter with one of the following options:

(A) Payment of the claim in the full amount as outlined in the claim letter; or

(B) Request, in writing, to make installment payments; or

(C) Request, in writing, an informal hearing; or

(D) Request, in writing, an administrative hearing.

(4) A request under paragraph (3)(C) or (D) of this subsection must contain the following:

(A) A concise statement of the issues to be presented at the hearing, including the occurrence of the violations, the amount of the penalty, or both;

(B) defenses the carrier asserts to the department's claim; and

(C) supporting documents to show defenses and/or financial condition of the carrier.

(5) A request under paragraph (3)(C) of this subsection that does not contain the information required in paragraph (4) of this subsection may, after notice and a reasonable opportunity to correct the defect, be set for an administrative hearing rather than an informal hearing, at the discretion of the department [~~Failure to respond within 20 business days as outlined in paragraph (3)(A), (B), (C) or (D) of this subsection will deem the claim letter as a Final Departmental Decision~~].

(b) Informal hearing.

(1) If requested, the department will hold an informal hearing to discuss a penalty recommended under this section. Such hearing will be scheduled and conducted by the manager of the Motor Carrier Bureau or the director's designee.

(2) An informal hearing shall not be subject to rules of evidence and civil procedure except to the extent necessary for the orderly conduct of the hearing. The department will summarize the nature of the violation and the penalty, and discuss the factual basis for such. The motor carrier will be afforded an opportunity to respond to the allegations verbally and/or in writing.

(3) After the conclusion of the informal hearing, the hearing officer will issue a Memorandum of Decision, which will be provided to the motor carrier. The Memorandum of Decision will contain the following:

(A) a statement of findings by the hearing officer, including a statement of dismissal of charges, modification of penalties, or affirmation of penalties; and

(B) if the penalties are modified or affirmed, the Memorandum of Decision will be accompanied by a revised claim letter requiring the motor carrier to respond within 20 business days of receipt of claim letter with one of the following options:

(i) Payment of the claim in the full amount as outlined in the claim letter; or

(ii) Request to make installment payments; or

(iii) Request an administrative hearing before the State Office of Administrative Hearings.

[~~(4) Failure to respond as outlined in paragraph (3)(B)(i) or (ii) of this subsection will deem the revised claim letter as a Final Departmental Decision.~~]

(c) Administrative Hearing.

(1) If the motor carrier requests an administrative hearing, as required by subsection (a)(3)(D) or (b)(3)(B)(iii) of this section, the department shall request an administrative hearing before the State Office of Administrative Hearings. The department will provide written notice by certified mail, return receipt requested, or by personal service of such action to the motor carrier. The administrative law judge for the State Office of Administrative Hearings shall issue a proposal for decision setting out the judge's findings of fact, conclusions of law and recommendations in accordance with agency rules and statutes, including a recommendation regarding the award and amount of costs, fees, expenses, and reasonable and necessary attorney's fees incurred by the state.

(2) The director may adopt those findings and make it part of the director's order; or the director may, pursuant to §2001.058(e), Government Code, increase or decrease the amount of the penalty recommended by the administrative law judge. Notice of the director's order and proposal for decision shall be given to the affected person as required by Chapter 2001, Government Code, and must include a statement that the person is entitled to seek a judicial review of the order. Before the 31st calendar day after the date the director's order becomes final as provided in §2001.004, Government Code, the person must:

(A) pay the penalty in full;

(B) pay the penalty in full and file a petition for judicial review contesting:

(i) the occurrence of the violation(s);

(ii) the amount of the penalty; or

(iii) both the occurrence of the violation(s) and the amount of the penalty.

(C) without paying the penalty, file a petition for review contesting:

(i) the occurrence of the violation(s);

(ii) the amount of the penalty; or

(iii) both the occurrence of the violation(s) and the amount of the penalty.

(3) A contested case under this subsection will be governed by Texas Government Code, Chapter 2001, subchapters C and D, Texas Transportation Code, §644.153, and 37 TAC, Chapter 29 of this title (relating to General Rules of Practice and Procedure), and not by Title 49, Code of Federal Regulations, Part 386, Subparts D and E.

(d) A final department decision is subject to judicial review under the substantial evidence rule, Texas Government Code, §2001.174. For purposes of collection of the administrative penalty, Final Departmental Decision is defined as:

(1) the most recent claim letter issued to a motor carrier who fails to request an informal hearing or an administrative hearing within 20 business days of receipt of the Notice of Claim; or

(2) the most receipt claim letter issued to a motor carrier who fails to pay or becomes delinquent in the payment of an administrative penalty as outlined in §4.16 of this title (relating to Administrative Penalties, Payment, Collection and Settlement of Penalties); or

(3) a Final Order issued by the director as a result of an administrative hearing as outlined in this subchapter.

§4.18. Intrastate Operating Authority Out-of-Service Review.

(a) A motor carrier may request a review of the out-of-service order within 10 business days of the issuance of the out-of-service order. A request for a review does not stay the out-of-service order. A request for an out-of-service review must be made in writing and forwarded to the manager of the Motor Carrier Bureau. If requested, a review will be scheduled and conducted by the manager of the Motor Carrier Bureau or the director's designee within 10 business days of the issuance of the out-of-service order. A request for review should be addressed to the Texas Department of Public Safety, Motor Carrier Bureau, P.O. Box 4087, Austin, Texas 78773-0521 or may be sent by facsimile transmission to (512) 424-5712 or via electronic mail at MotorCarrierBureau@txdps.state.tx.us. The department may conduct the review by telephone conference call. An out-of-service review should be conducted within 3 business days of the date of receipt of the request for a review.

(b) A request for review under subsection (a) of this section must contain the following: a concise statement of the issues to be contested at the review.

(c) A final agency decision on an out-of-service order is subject to Texas Government Code, Chapter 2001. Judicial review is subject to the substantial evidence rule under Texas Government Code, §2001.174. A final agency decision is: [Failure to respond as outlined in subsections (a) or (b) of this section will deem the out-of-service order as a Final Department Decision.]

(1) the initial order if the affected person fails to respond as outlined in subsections (a) or (b) of this section, or

(2) the decision as a result of a review under subsection (a) or (b) of this section.

§4.19. Administrative Action by the Texas Department of Transportation.

(a) The director or the director's designee will determine whether the department will request the Texas Department of Transportation to revoke a registration issued by the Texas Department of Transportation based upon the department's compliance review or safety audit. The director or the director's designee will determine whether the department will request the Texas Department of Transportation to take administrative action against a carrier required to register with the Texas Department of Transportation under Chapter 643 of the Texas Transportation Code.

(b) This determination may be based upon the following:

(1) an unsatisfactory safety rating under Title 49, Code of Federal Regulations, Part 385; [and/or]

(2) multiple violations of Texas Transportation Code, Chapter 644, a rule adopted under Texas Transportation Code, Chapter 644, or Texas Transportation Code, Subtitle C (Relating to Rules of the Road, and/or

(3) [(2)] not properly registering as a motor carrier with the Texas Department of Transportation as required in Texas Transportation Code, Chapter 643.

(c) Once the determination has been made the director or the director's designee will forward a letter to the executive director of the Texas Department of Transportation requesting said department initiate an administrative action against the motor carrier.

(d) Any administrative action initiated by the Texas Department of Transportation, pursuant to this section, shall be administered in the manner specified by the rules of the Texas Department of Transportation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 22, 2005.

TRD-200500802
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: April 10, 2005
For further information, please call: (512) 424-2135

WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 139. EXEMPTIONS BY RULE OR ORDER

7 TAC §139.16

The State Securities Board withdraws the proposed amendment to §139.16 which appeared in the October 22, 2004, issue of the *Texas Register* (29 TexReg 9757).

Filed with the Office of the Secretary of State on February 23, 2005.

TRD-200500842
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Effective date: February 23, 2005
For further information, please call: (512) 305-8300

TITLE 10. COMMUNITY DEVELOPMENT

PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

CHAPTER 303. REGISTRATION

SUBCHAPTER E. TEXAS STAR BUILDER PROGRAM

10 TAC §§303.300 - 303.310

The Texas Residential Construction Commission withdraws proposed new §§303.300 - 303.310 which appeared in the December 3, 2004, issue of the *Texas Register* (29 TexReg 11234).

Filed with the Office of the Secretary of State on February 22, 2005.

TRD-200500798
Susan Durso
General Counsel
Texas Residential Construction Commission
Effective date: February 22, 2005
For further information, please call: (512) 475-0595

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 43. TUBERCULOSIS

SUBCHAPTER A. CATTLE

4 TAC §43.2

The Texas Animal Health Commission (commission) adopts amendments to Chapter 43, entitled "Tuberculosis", §43.2, concerning Interstate Movement Requirements, without changes to the proposed text as published in the December 24, 2004, issue of the *Texas Register* (29 TexReg 11834) and will not be republished.

The purpose of this amendment is to move the current entry requirements for Tuberculosis from Chapter 43 to Chapter 51 as part of the process to consolidate entry requirements into one regulatory chapter. This adoption removes those current requirements as they are being adopted for inclusion in Chapter 51, §51.8(b), regarding entry requirements for "Tuberculosis". In its place the commission is adding a reference to §51.8(b).

No comments were received regarding adoption of the rule.

Chapter 43 is adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, Section 161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, by Section 161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the commission determines that a disease listed in Section 161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place. That is found in Section 161.061.

As a control measure, the commission by rule may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That is found in Section 161.054. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. That authority is found in Section 161.048.

Section 161.061 provides that if the commission determines that a disease listed in Section 161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state where livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 24, 2005.

TRD-200500860
Gene Snelson
General Counsel
Texas Animal Health Commission
Effective date: March 16, 2005
Proposal publication date: December 24, 2004
For further information, please call: (512) 719-0714

CHAPTER 51. ENTRY REQUIREMENTS

4 TAC §§51.3, 51.8, 51.10 - 51.12, 51.14

The Texas Animal Health Commission (commission) adopts amendments to Chapter 51, entitled "Entry Requirements", §§51.3, 51.8, 51.10 - 51.12 and 51.14, without changes to the proposed text as published in the December 24, 2004, issue of the *Texas Register* (29 TexReg 11836) and will not be republished.

The amendments are in regards to entry requirements for cattle for tuberculosis and sheep and goats for Scrapie. These requirements are being relocated from their existing locations in Chapter 43 for Tuberculosis and for Chapter 60 for Scrapie and continues a long term process to consolidate all of the commission's animal health entry requirements into one chapter.

In order to provide a more cohesive organization of the agency's regulatory requirements, the commission is in the process to consolidate all the entry requirements into one chapter. This chapter is organized by providing for a centralized location for all general, exceptions and special requirements. The specific

entry requirements are then located by species with specific requirements delineated by disease. The commission believes this will provide a more user friendly format for someone to use who is trying to comply with legal requirements when bringing livestock into Texas. Also, the commission believes this effort will help insure consistency throughout the various requirements through the consolidation efforts.

Tuberculosis: The purpose of this adoption is to move the move the interstate movement requirements for Tuberculosis into Chapter 51. At the same time the commission making changes to the current requirements is to put in place test requirements for sexually intact dairy cattle moving interstate and coming to Texas. Also the rule is repealing the current specific entry requirement for cattle coming from Michigan in order to allow those animals to move in accordance with test requirements related to their USDA Tuberculosis status.

The commission is amending old §43.2(a) and inserting the term "beef" and "sexually neutered dairy cattle" into the regulation in order to recognize that those cattle may enter without a test in accordance with the federal standards. The rule ensures the distinction between which animals are exempt from the tuberculosis test requirements and which are not.

The commission is adding a new subsection, §43.2(c), to require that all sexually intact dairy cattle originating from a tuberculosis free state, or area, that are 6 months of age or older need to be officially identified, and are accompanied by a certificate stating they were negative to an official tuberculosis test conducted within 60 days prior to the date of movement.

The reason for this requirement is that during fiscal year 2004, there were 6 dairy herds disclosed with tuberculosis infection in the U.S. Three of these herds were located in states that were recognized as TB free (Arizona and New Mexico). California and Texas have also lost their free status within the last 3 years due to newly disclosed infection in dairy herds. The investigation of the sources of the disease indicates that the initial infection may have entered the herds through replacement cattle purchased from herds in other state, which are recognized as TB free. Dairy heifer replacements appear to be an emerging pathway for TB infection.

Thirty-four states already require a current negative test on sexually intact dairy animals entering from other "free" states. This test requirement is a reflection of the concerns that some states of "free" status, may have some unknown risk of TB infection in their dairy animals because of inadequate slaughter surveillance, incomplete epidemiology on pending investigations, and unacceptable caudal fold response rates for private veterinarians performing field tests. There are currently 7 investigations underway to disclose the source of US dairy feeder animals disclosed at slaughter, in FY 2004.

The TAHC has recently completed the testing of all dairies in Texas. In testing 807 dairies, and over 335,000 head of cattle, one infected dairy was disclosed. Now that the dairy testing is completed, it is equally important that the TAHC adopt the proposed TB test entry requirement to ensure that the disease is not reintroduced into the state's dairy industry. Because of the continuing threat of TB in dairy replacement animals, any sexually intact animals that enter Texas under 6 months of age (without a test), will be restricted until they receive a negative test upon reaching 6 months of age

The new subsection also exempts animals, which originate from a tuberculosis accredited herd, and animals moving directly to an approved slaughtering establishment, from the test requirement.

Also the commission is repealing current subsections related to specific entry requirements for cattle coming from Michigan. The reason for those entry requirements is that Michigan had quarantined an area of that state because of tuberculosis. However recently Michigan has been granted zonal status for bovine tuberculosis program. USDA recently amended their bovine tuberculosis regulations, contained in 9 CFR part 77, and entitled ''Tuberculosis'', and established two separate zones with different risk classifications for the State of Michigan. In Section 77.9, entitled "Modified accredited advanced States or zones" the regulation provides that all of the State of Michigan has that status except for the zone that comprises those counties or portions of counties in Michigan described in Section 77.11(b). In Section 77.11(b) the following area is defined as having the status of a modified accredited zones: a zone in Michigan that comprises Alcona, Alpena, Antrim, Charlevoix, Cheboygan, Crawford, Emmet, Montmorency, Oscoda, Otsego, and Presque Isle Counties and those portions of Iosco and Ogemaw Counties that are north of the southernmost boundary of the Huron National Forest and the Au Sable State Forest. Animals from those zones can move into Texas in accordance with the federal requirements for areas with that status and as provided in new subsection (b). However for §51.10(d), related to entry requirements for Cervids and §51.11 related to entry requirements for Goats the commission is amending the special entry requirements for those two species coming from Michigan. As noted above the state of Michigan has two different status areas for Bovine Tuberculosis with the one area provided above. These different status are for movement of cattle and not applicable for cervids or goats. As such the commission is not changing those entry requirements but are reconfiguring the affected Tuberculosis zone to conform to the zone designated by Michigan.

Also the commission is removing the stated requirement that they would consider for repeal or amendment in April 2004 subsection (g)(2) and (3) of this section because the commission is maintaining those requirements because of an upcoming change in USDA requirements.

Scrapie: This adoption provides that all blackface ovine females and all blackface crossbred females, except hair sheep, imported into the State of Texas for breeding purposes shall originate from a Scrapie Certified Free Flock or have documentation supporting that the animals are of the genotype RR at codon 171 or AA at codon 136 and QR at codon 171.

Scrapie is a fatal degenerative disease affecting the central nervous system of sheep and goats. It is a member of a family of diseases known as transmissible spongiform encephalopathies (TSEs), which includes bovine spongiform encephalopathy (mad cow disease) and chronic wasting disease (CWD) in deer and elk. It is caused by a prion protein which causes destruction of brain tissue. Scrapie is primarily transmitted from an infected female to her offspring or to other young animals in the flock through contact with birthing tissues or fluids. Clinical signs of the disease usually appear 2 to 5 years after the animal becomes infected. A test which utilizes lymphoid tissue, commonly from the third eyelid is the only recognized live animal test currently approved for diagnosing scrapie in sheep. Use of the third eyelid test is limited to certain genotypes of sheep and requires an adequate amount of lymphoid tissue to be submitted.

Scrapie was first recognized as a disease of sheep in Great Britain and Western Europe over 250 years ago. It was first diagnosed in the United States in 1947. Since then, it has spread to flocks throughout the United States. During calendar year 2001 in Texas, two infected flocks were disclosed. The Scrapie Eradication Program began in 1952, but it was not successful. The program was modified in the early 1980s utilizing bloodlines to identify "high risk" animals. The American Sheep Industry Association (ASI) identified Scrapie in the U.S. as a major impediment to being competitive in the marketing arena. The National Scrapie Eradication Program was implemented by the USDA, APHIS, on November 1, 2001, through the promulgation of new regulations in 9 CFR Parts 54 and 79. These proposed rule changes in Chapter 60 are to support the federal regulations.

The adopted rule is §60.3, entitled "Interstate Movement of Sheep and Goats". It was requested by Texas Sheep and Goat Raisers Association to try and assist in speeding up scrapie eradication in Texas. Texas receives a large number of out of state sheep which greatly increase the exposure of Texas sheep to Scrapie. There have been documented cases of out of state blackface ewes being infected with Scrapie. The higher incidence of Scrapie in these specific types of sheep has the United States Department of Agriculture focusing surveillance on all mature black and mottled face sheep going to slaughter. Because of the risk of exposure to Scrapie in these types of sheep and in order to protect the Texas Sheep and Goat industry, the Commission is proposing additional importation requirement on black faced and black faced crossbred ewes to reduce the risk of importing Scrapie infected animals. The requirement provides that all blackface ovine females imported into the State of Texas for breeding purposes shall originate from a Scrapie Certified Free Flock or have documentation supporting that the animals are of the genotype RR at codon 171 or AA at codon 136 and QR at codon 171.

Genotype testing for susceptibility to Scrapie can be done through laboratories approved by United States Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS) Veterinary Services (VS). This approval is in accordance with Title 9, Code of Federal Regulations, Part 54.11 and Veterinary Services Memorandum Number 557.6. The approved laboratories are eligible to conduct privately funded official Scrapie genotype testing. The approval of laboratories to do official testing allows the producer to choose from several laboratories to obtain official test results. These readily available genotyping services will assist out of state producers in obtaining the required test. This section is being moved from its current location in Chapter 60. Subsection (a) from Chapter 60 is the only part not being included in this adoption. The reason is that the information is redundant because those requirements are found in other sections of Chapter 51.

Swine: Under Section 51.3(c) the commission is including as a exception for having an entry permit that swine that originate from a Pseudorabies Stage IV or V state or areas and Brucellosis free state or areas and are not vaccinated for pseudorabies;

Section 51.14 is amended to allow feeder pigs to move into Texas while being exempt from testing or other pseudorabies safeguard requirements as long as they are permitted by the TAHC for entry, shipped directly to a designated feedlot and remain restricted to that location until sent to slaughter.

No comments were received regarding adoption of the amendments.

Chapter 51 is adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, Section 161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, by Section 161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the commission determines that a disease listed in Section 161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place. That is found in Section 161.061.

As a control measure, the commission by rule may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That is found in Section 161.054. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. That authority is found in Section 161.048.

Section 161.005 provides that the commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire commission.

Section 161.061 provides that if the commission determines that a disease listed in Section 161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state where livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 24, 2005.

TRD-200500861
Gene Snelson
General Counsel
Texas Animal Health Commission
Effective date: March 16, 2005
Proposal publication date: December 24, 2004
For further information, please call: (512) 719-0714

CHAPTER 55. SWINE

4 TAC §§55.1, 55.4, 55.5. 55.9

The Texas Animal Health Commission (commission) adopts amendments to Chapter 55, entitled "Swine", §§55.1, 55.4, 55.5 and 55.9, without changes to the proposed text as published in the December 24, 2004, issue of the *Texas Register* (29 TexReg 11841) and will not be republished.

The purpose of the amendments to Chapter 55 is to ensure commission rules are accurately updated to comply with the Uniform Methods and Rules issued by USDA Veterinary Services regarding the national Brucellosis and Pseudorabies eradication programs. National standards are being enacted that define swine production operations (commercial or transitional) based on exposure to feral swine.

The changes are to §55.1, entitled "Testing Breeding Swine Prior to Sale or Change of Ownership"; §55.4, "Livestock Markets Handling Swine"; §55.5, "Pseudorabies" and §55.9, "Feral Swine". The Commission is also making the appropriate changes to the state's entry requirements as found in Chapter 51.

Pseudorabies is a disease of swine that can also affect cattle, horses, dogs, cats, sheep, goats, and other species. The disease is caused by Herpesvirus suis. Pseudorabies virus affects different age classes differently. Very young swine (piglets) usually show central nervous system signs and mortality may approach 100%. Feeder swine more typically have respiratory signs and moderate mortality but survivors become unthrifty. Mature swine may show mild intestinal disease with little to no mortality. This virus may be spread on inanimate objects, such as boots, clothing, feed, trucks, and equipment from herd to herd and farm to farm. Pseudorabies can be prevented by tight biosecurity and meticulous management with disease control and prevention in mind. Brucellosis is a contagious disease of animal species that may affects humans. Although brucellosis can attack many types of animals, our main concerns at this time are related to infections in cattle, bison, and swine. The disease is known as contagious abortion or Bang's disease. Brucellosis may be transmitted to susceptible animals by contact with infectious materials from animals or from an environment that has been contaminated with discharges from infected animals. Unlike cattle, the disease in swine may be transmitted sexually. The disease may also be spread between wild animals or domestic animals when there in commingling.

Amendments: The commission is adding definitions to §55.1 for "Test Eligible", "Commercial Production Swine", "Transitional Production Swine", "Farm of Origin" and "Infected Herd". These are in order to incorporate standards and terminology now utilized by USDA in their Brucellosis and Pseudorabies Eradication programs. Also the commission is removing from §55.1(b)(1) the limitation on testing at livestock markets when the weather is hot. The current regulatory language is no longer acceptable under the federal programs. In accordance with this change the commission is removing test requirements contained in §55.4(i), which were hot weather requirements, and leaving in the requirements of §55.4(j) as the year around requirements. In §55.4(b) the commission is providing a clearer definition for test eligible swine that more closely corresponds to the federal definition.

In §55.5(a) the commission is also adding definitions for "Commercial Production Swine" and "Transitional Production Swine". In subsection (b) the commission is adding standards necessary to be recognized as a producer of commercial swine under the federal program. In subsection (c) the commission provides that breeding swine sold or destined for slaughter are required to be identified, using a method recognized by the commission, to the farm-of-origin. This is also in order to meet the federal standards. Under the existing requirements subsection (b) becomes subsection (d) with the additions noted above. Also this section refers to action under quarantines and the commission is changing that terminology from "quarantines" to "movement restrictions" because either a quarantine or hold order may be used to restrict movement. The term quarantine is being replaced with "movement restrictions" throughout this section.

The commission adds a subsection (e) which is entitled "Pseudorabies Management of Infected, Exposed or Area Herds" This section identifies the herd management options and actions, including timeframes, as established by the federal standards.

Under the existing requirements subsection (c) now becomes new subsection (f) and provides that vaccination of swine with a PRV vaccine is prohibited without written permission of the executive director. Written permission may be granted only for use in high risk herds or as part of an approved herd-cleanup plan.

Section 55.9 is amended to recognize the terms commercial or transitional for location of a feral swine holding facility as well as to note that feral swine shall not be intentionally commingled with commercial swine.

No comments were received regarding adoption of the rules.

Chapter 55 is adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, Section 161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, by Section 161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the commission determines that a disease listed in Section 161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place. That is found in Section 161.061.

As a control measure, the commission by rule may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That is found in Section 161.054. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. That authority is found in Section 161.048.

Section 161.061 provides that if the commission determines that a disease listed in Section 161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state where livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place.

Chapter 165 of the Texas Agriculture Code and entitled "Control of Diseases of Swine" has several sections which also provide statutory authority for these amendments. Section 165.021, and entitled "Cooperation with United States Department of Agriculture", provides that the commission may cooperate with USDA in the eradication of swine diseases. Also 165.022 provides that may adopt rules for the manner and method of eradicating swine diseases. Under Section 165.023 the commission is authorized to adopt rules governing the use of biologics.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 24, 2005.

TRD-200500862
Gene Snelson
General Counsel
Texas Animal Health Commission
Effective date: March 16, 2005
Proposal publication date: December 24, 2004
For further information, please call: (512) 719-0714

CHAPTER 60. SCRAPIE

4 TAC §60.3

The Texas Animal Health Commission (commission) adopts amendments to Chapter 60, entitled "Scrapie", §60.3, without changes to the proposed text as published in the December 24, 2004, issue of the *Texas Register* (29 TexReg 11845) and will not be republished.

The purpose of this amendment is to move the current entry requirements for Scrapie from Chapter 60 to Chapter 51 as part of the process to consolidate entry requirements into one regulatory chapter. This adoption those current requirement as they are being proposed for inclusion in Chapter 51, §51.8(b), regarding entry requirements for "Scrapie". In its place the commission is adding a reference to §51.8(b).

No comments were received regarding adoption of the rule.

Chapter 60 is adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, Section 161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, by Section 161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the commission determines that a disease listed in Section 161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place. That is found in Section 161.061.

As a control measure, the commission by rule may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That is found in Section 161.054. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. That authority is found in Section 161.048.

Section 161.061 provides that if the commission determines that a disease listed in Section 161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state where livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gene Snelson
General Counsel
Texas Animal Health Commission
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TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

SUBCHAPTER C. EXAMINATION

22 TAC §1.43

The Texas Board of Architectural Examiners adopts an amendment to §1.43 for Title 22, Chapter 1, Subchapter C, pertaining to examinations. The amendment to §1.43 was published in the November 19, 2004, issue of the *Texas Register* (29 TexReg 10675). It is being adopted without changes and the text will not be republished.

The amendment to this rule will simplify it and make it less stringent upon candidates seeking registration. The amendment will allow registration candidates to maintain credit for passing a section of the registration examination for five years after passing it.

Pursuant to the rule as amended, a person who passes a section of the registration examination would be required to pass the remaining sections of the examination within five years in order to be registered. A person who fails to pass the remaining sections of the examination within that period would forfeit credit for the section of examination passed and would have to pass that

section again in order to be registered. Under the rule as it existed prior to amendment, an examinee was required to pass the examination within five years after she or he had been approved by the Board for examination. Pursuant to the prior version of the rule, a person who did not pass all sections of the examination within five years after approval forfeited credit for all sections passed and would have had to submit a new registration application for approval to take the entire examination again.

The amendment also modifies the previous version of the rule as it applied to persons who were approved to take the examination prior to January 1, 2002. As amended, the rule retains the requirement that applicants approved before January 1, 2002, must pass all sections of the examination by December 31, 2006. However, failure to meet that deadline will result in the forfeiture of only those sections of the examination passed prior to January 1, 2002, not forfeiture of all sections passed, as previously required under the rule.

The amendment makes the rule less stringent in that the five-year period commences at a later date - upon passage of a section of the examination in lieu of upon approval to take the examination. The consequences of failing to pass all sections of the examination within the five-year period will also be less severe. Failure to meet the deadline will result in the forfeiture of the credit for only those examination sections passed on or before the commencement of the five-year period. In addition, the amendment repeals a provision that required candidates to submit another registration application upon failing to meet the five-year deadline.

The agency received no public comment about the proposal to amend §1.43.

The amendment is adopted pursuant to Section 1051.202 of Tex. Occupations Code Annotated ch. 1051, which provides the Board with general authority to promulgate rules necessary to the administration of its statutory responsibilities. The amendment is also adopted pursuant to Section 1051.704(1) of Tex. Occupations Code Annotated ch. 1051, which requires the Board to examine each applicant for registration on any architectural subject or procedure the Board requires.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas Board of Architectural Examiners
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For further information, please call: (512) 305-8535

SUBCHAPTER L. HEARINGS--CONTESTED CASES

22 TAC §1.234

The Texas Board of Architectural Examiners adopts new §1.234 for Title 22, Chapter 1, Subchapter L pertaining to the suspension of registration as a disciplinary action by the Board. The proposal to adopt new §1.234 was published in the November 19, 2004, issue of the *Texas Register* (29 TexReg 10676). The new rule is being adopted with changes to the proposed version.

The new rule provides guidance to the Board and to administrative law judges when considering whether the probation of a registrant's registration should be active or probated. The rule specifies the possible terms and conditions upon practice that may be imposed as a part of probated suspension of registration. The rule supports the imposition of consistent disciplinary action upon registrants.

The Board amended the rule as proposed. The amendment alters one of the criteria for imposing an active, in lieu of a probated, suspension upon a respondent. As proposed, the rule required an active suspension upon a finding that the respondent's violation of a law or a board rule caused a serious threat to the health or safety of the public. As amended, the adopted version of the rule requires the imposition of an active suspension upon a finding that the respondent's violation of the law demonstrated gross negligence, recklessness, or the conduct posed a serious threat to the health or safety of the public.

Under the new rule, active suspension, prohibiting practice, is imposed for violations that: demonstrated gross negligence, recklessness, or posed a serious threat to the public health and safety; caused damage to property in excess of $1,000; resulted in a violation of the terms and conditions of a probated suspension; were committed by one with a significant sanction history; or would likely engage in a practice not in compliance with standards normally followed by reasonably prudent registrants.

Probated suspension of registration is applicable to other less serious violations. The rule lists the following terms and conditions that may be imposed to restrict the practice of one whose registration is under a probated suspension: monitoring of practice by mandatory reporting or impromptu visits, directed continuing education, limitations on the scope of practice, required supervision and control of practice by another registrant, and successful completion of a rehabilitation program for the treatment of substance abuse.

The rule also specifies disciplinary action that may be taken against a person who practices with an actively suspended registration or who violates the terms and conditions of a probated suspension of registration. The disciplinary action that may be taken for such a violation is prolonged suspension, a more restricted probated suspension, an administrative penalty, or revocation.

As a result of this new rule, the Board and administrative law judges have the guidelines to impose terms and conditions of the suspension of registration that are appropriate under the facts and circumstances of each case. The new rule also supports the imposition of the suspension of registration in a manner that is consistent in similar cases.

The agency received one comment concerning the new rule: The commenter suggested modifying one of the criteria for imposing an active suspension upon a respondent. As proposed, the rule would require active suspension upon a finding that the respondent would likely engage in the practice of architecture in a manner that does not comply with a standard of practice normally followed by a reasonably prudent architect under the same

or similar circumstances. The commenter recommended changing that standard to compliance with the standards of practice of a reasonably prudent design professional. The commenter noted that in the context of a civil action, an architect's conduct is measured against the standard those with some expertise in fire safety codes, including engineers involved in the development of fire safety standards. The board declined making the proposed revision. The underlying rules enforced by the board hold architects to the objective standard of a reasonably prudent architect. The board concluded that a different, and somewhat less specific, standard applied in a rule addressing the imposition of a sanction for violation of the underlying rules would be inconsistent and may create confusion. Furthermore, the standards applied in the regulatory context are not necessarily the same as those applied in civil actions.

The new rule is adopted pursuant to Section 1051.202 of Tex. Occupations Code Annotated ch. 1051, which provides the Board with general authority to promulgate rules necessary to the administration of its statutory responsibilities. The new rule is also adopted pursuant to Section 1051.501 of Tex. Occupations Code Annotated ch. 1051 which grants the Board authority to take enforcement action against a person who violates the laws enforced by the Board. The new rule is also adopted pursuant to Section 1051.751 of Tex. Occupations Code Annotated ch. 1051, which authorizes the Board to suspend registration as a disciplinary action and specifies the terms and conditions that may be imposed upon a probated suspension.

§1.234. Suspension of Registration.

(a) If suspension of a person's registration is the appropriate sanction for a violation of a statutory provision or rule enforced by the Board, the Board and the administrative law judge shall apply the following guidelines to determine whether the suspension will be active or probated:

(1) The Board and the administrative law judge shall impose an active suspension upon a finding that the respondent:

(A) violated a statutory provision or rule enforced by the Board that demonstrated gross negligence or recklessness, or the conduct posed a serious threat to the health or safety of the public;

(B) violated a statutory provision or rule enforced by the Board which caused economic damage to property in excess of $1,000;

(C) committed a violation of a statutory provision or rule enforced by the Board while the respondent's registration was on probated suspension;

(D) has a sanction history including at least two findings by the Board that the respondent engaged in conduct for which the respondent's registration could have been suspended or revoked pursuant to Section 1.232; or

(E) would likely engage in the practice of Architecture in a manner that does not comply with a standard or practice normally followed by a reasonably prudent Architect under the same or similar circumstances.

(2) In any case in which active suspension is not warranted, the suspension imposed by the Board shall be probated.

(b) A person whose registration is under active suspension may not engage in the Practice of Architecture. A person whose registration is under active suspension may not Supervise and Control or have Responsible Charge over the Practice of Architecture by another.

(c) The Board may impose any of the following terms and conditions upon the practice of a person whose registration is subject to a probated suspension:

(1) monitoring of practice, including mandatory submission of information to the Board and random and unannounced visits by personnel of the Board to investigate compliance with the terms of the probated suspension;

(2) directed continuing education on applicable subjects, including ethics training, in excess of the continuing education requirements applicable to all Registrants;

(3) limitations on scope of practice;

(4) mandatory Supervision and Control of practice by another registered Architect; and

(5) successful completion of a rehabilitation program pursuant to Section 1.150.

(d) If a person violates the terms of a probated suspension of registration, the Board may:

(1) prolong the period of probated suspension;

(2) impose an active suspension of registration; or

(3) impose additional terms and conditions upon the probated suspension.

(e) If a person engages in the Practice of Architecture while the person's registration is subject to an active suspension, the Board may impose any or all of the following:

(1) issue an order restraining any further practice by the person;

(2) impose an administrative penalty;

(3) impose an additional period of suspension; or

(4) revoke the person's certificate of registration.

(f) In addition to fulfilling the terms and conditions of a probated or active suspension of registration, a person must fulfill the requirements of Section 1.178 in order to obtain reinstatement of the person's suspended certificate of registration.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
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For further information, please call: (512) 305-8535

CHAPTER 3. LANDSCAPE ARCHITECTS
SUBCHAPTER C. EXAMINATION

22 TAC §3.43

The Texas Board of Architectural Examiners adopts an amendment to §3.43 for Title 22, Chapter 3, Subchapter C, pertaining to examinations. The amendment to §3.43 was published in the November 19, 2004, issue of the *Texas Register* (29 TexReg 10677). It is being adopted without changes and the text will not be republished.

The amendment to this rule will simplify it and make it less stringent upon candidates seeking registration. The amendment will allow registration candidates to maintain credit for passing a section of the registration examination for five years after passing it.

Pursuant to the rule as amended, a person who passes a section of the registration examination will be required to pass the remaining sections of the examination within five years in order to be registered. A person who fails to pass the remaining sections of the examination within that period will forfeit credit for the section of examination passed and must pass that section again in order to be registered. Under the rule as it previously existed, a person was required to pass the examination within five years after she or he had been approved by the Board for examination. Pursuant to the previous version of the rule, a person who did not pass all sections of the examination within five years after approval forfeited credit for all sections passed and would have had to submit a new registration application for approval to take the entire examination again.

The amendment also modifies the rule as it applied to persons who were approved to take the examination prior to January 1, 2002. As amended, the rule retains the requirement that applicants approved before January 1, 2002, must pass all sections of the examination by December 31, 2006. However, failure to meet that deadline will result in the forfeiture of only those sections of the examination passed prior to January 1, 2002, not forfeiture of all sections passed, as required under the prior version of the rule.

The amendment makes the rule less stringent in that the five-year period will commence at a later date - upon passage of a section of the examination in lieu of upon approval to take the examination. The consequences of failing to pass all sections of the examination within the five-year period will also be less severe. Failure to meet the deadline will result in the forfeiture of the credit for only those examination sections passed on or before the commencement of the five-year period. In addition, the amendment repeals a provision requiring candidates to submit another registration application upon failing to meet the five-year deadline.

The agency received no public comment about the proposal to amend §3.43.

The amendment is adopted pursuant to Section 1051.202 of Tex. Occupations Code Annotated ch.1051, which provides the Board with general authority to promulgate rules necessary to the administration of its statutory responsibilities. The amendment is also adopted pursuant to Section 1052.153(b) of Tex. Occupations Code Annotated ch. 1052, which requires the Board to prescribe the scope of the examination and the methods of procedure that will ensure the safety of the public welfare and property rights.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER K. HEARINGS--CONTESTED CASES

22 TAC §3.234

The Texas Board of Architectural Examiners adopts new §3.234 for Title 22, Chapter 3, Subchapter K pertaining to the suspension of registration as a disciplinary action by the Board. The proposal to adopt new §3.234 was published in the November 19, 2004, issue of the *Texas Register* (29 TexReg 10678). The new rule is being adopted with changes to the proposed version.

The new rule provides guidance to the Board and to administrative law judges when considering whether the probation of a registrant's registration should be active or probated. The rule specifies the possible terms and conditions to practice that may be imposed as a part of probated suspension of registration. The rule supports the imposition of consistent disciplinary action upon registrants.

The Board amended the rule as proposed. The amendment alters one of the criteria for imposing an active, in lieu of a probated, suspension upon a respondent. As proposed, the rule required an active suspension upon a finding that the respondent's violation of a law or a board rule caused a serious threat to the health or safety of the public. As amended, the adopted version of the rule requires the imposition of an active suspension upon a finding that the respondent's violation of the law demonstrated gross negligence, recklessness, or the conduct posed a serious threat to the health or safety of the public.

Under the new rule, active suspension, prohibiting practice, will be imposed for violations that: demonstrated gross negligence, recklessness, or posed a serious threat to the public health and safety; caused damage to property in excess of $1,000; resulted in a violation of the terms and conditions of a probated suspension; were committed by one with a significant sanction history; or would likely engage in a practice not in compliance with standards normally followed by reasonably prudent registrants.

Probated suspension of registration will be applicable to other less serious violations. The rule lists the following terms and conditions that may be imposed to restrict the practice of one whose registration is under a probated suspension: monitoring of practice by mandatory reporting or impromptu visits, directed continuing education, limitations on the scope of practice, required supervision and control of practice by another registrant, and successful completion of a rehabilitation program for the treatment of substance abuse.

The rule specifies disciplinary action that may be taken against a person who practices with an actively suspended registration or who violates the terms and conditions of a probated suspension of registration. The disciplinary action that may be taken for such

a violation is prolonged suspension, a more restricted probated suspension, an administrative penalty, or revocation.

As a result of this new rule, the Board and administrative law judges have guidelines to impose terms and conditions of the suspension of registration that are appropriate under the facts and circumstances of each case. The new rule supports the imposition of the suspension of registration in a manner that is consistent in similar cases.

The agency received no comments concerning the new rule.

The new rule is adopted pursuant to Section 1051.202 of Tex. Occupations Code Annotated ch. 1051, which provides the Board with general authority to promulgate rules necessary to the administration of its statutory responsibilities. The rule is also adopted pursuant to Section 1051.501 of Tex. Occupations Code Annotated ch. 1051 which grants the Board authority to take enforcement action against a person who violates the laws enforced by the Board. The new rule is also adopted pursuant to Section 1052.251 of Tex. Occupations Code Annotated ch. 1052, which authorizes the Board to suspend registration as a disciplinary action and specifies the terms and conditions that may be imposed upon a probated suspension. The proposed new rule does not affect any other statutes.

§3.234. Suspension of Registration.

(a) If suspension of a person's registration is the appropriate sanction for a violation of a statutory provision or rule enforced by the Board, the Board and the administrative law judge shall apply the following guidelines to determine whether the suspension will be active or probated:

(1) The Board and the administrative law judge shall impose an active suspension upon a finding that the respondent:

(A) violated a statutory provision or rule enforced by the Board that demonstrated gross negligence or recklessness, or the conduct posed a serious threat to the health or safety of the public;

(B) violated a statutory provision or rule enforced by the Board which caused economic damage to property in excess of $1,000;

(C) committed a violation of a statutory provision or rule enforced by the Board while the respondent's registration was on probated suspension;

(D) has a sanction history including at least two findings by the Board that the respondent engaged in conduct for which the respondent's registration could have been suspended or revoked pursuant to Section 3.232; or

(E) would likely engage in the practice of Landscape Architecture in a manner that does not comply with a standard or practice normally followed by a reasonably prudent Landscape Architect under the same or similar circumstances.

(2) In any case in which active suspension is not warranted, the suspension imposed by the Board shall be probated.

(b) A person whose registration is under active suspension may not engage in the Practice of Landscape Architecture. A person whose registration is under active suspension may not Supervise and Control or have Responsible Charge over the Practice of Landscape Architecture by another.

(c) The Board may impose any of the following terms and conditions upon the practice of a person whose registration is subject to a probated suspension:

(1) monitoring of practice, including mandatory submission of information to the Board and random and unannounced visits by personnel of the Board to investigate compliance with the terms of the probated suspension;

(2) directed continuing education on applicable subjects, including ethics training, in excess of the continuing education requirements applicable to all Registrants;

(3) limitations on scope of practice;

(4) mandatory Supervision and Control of practice by another registered Landscape Architect; and

(5) successful completion of a rehabilitation program pursuant to Section 3.150.

(d) If a person violates the terms of a probated suspension of registration, the Board may:

(1) prolong the period of probated suspension;

(2) impose an active suspension of registration; or

(3) impose additional terms and conditions upon the probated suspension.

(e) If a person engages in the Practice of Landscape Architecture while the person's registration is subject to an active suspension, the Board may impose any or all of the following:

(1) issue an order restraining any further practice by the person;

(2) impose an administrative penalty;

(3) impose an additional period of suspension; or

(4) revoke the person's certificate of registration.

(f) In addition to fulfilling the terms and conditions of a probated or active suspension of registration, a person must fulfill the requirements of Section 3.178 in order to obtain reinstatement of the person's suspended certificate of registration.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 5. INTERIOR DESIGNERS
SUBCHAPTER C. EXAMINATION

22 TAC §5.53

The Texas Board of Architectural Examiners adopts an amendment to §5.53 for Title 22, Chapter 5, Subchapter C, pertaining to examinations. The amendment to §5.53 was published in the November 19, 2004, issue of the *Texas Register* (29 TexReg

10680). It is being adopted without changes and the text will not be republished.

The amendment to this rule will simplify it and make it less stringent upon candidates seeking registration. The amendment will allow registration candidates to maintain credit for passing a section of the registration examination for five years after passing it.

Pursuant to the rule as amended, a person who passes a section of the registration examination will be required to pass the remaining sections of the examination within five years in order to be registered. A person who fails to pass the remaining sections of the examination within that period will forfeit credit for the section of examination passed and must pass that section again in order to be registered. Under the rule as it previously existed, a person was required to pass the examination within five years after she or he had been approved by the Board for examination. Pursuant to the that rule, a person who did not pass all sections of the examination within five years after approval forfeited credit for all sections passed and would have had to submit a new registration application for approval to take the entire examination again.

The amendment also modifies the rule as it applies to persons who were approved to take the examination prior to January 1, 2002. As amended, the rule retains the requirement that applicants approved before January 1, 2002, must pass all sections of the examination by December 31, 2006. However, failure to meet that deadline will result in the forfeiture of only those sections of the examination passed prior to January 1, 2002, not forfeiture of all sections passed, as previously required under the rule.

The amendment makes the rule less stringent in that the five-year period will commence at a later date - upon passage of a section of the examination in lieu of upon approval to take the examination. The consequences of failing to pass all sections of the examination within the five-year period will also be less severe. Failure to meet the deadline results in the forfeiture of the credit for only those examination sections passed on or before the commencement of the five-year period. In addition, the amendment repeals a provision requiring candidates to submit another registration application upon failing to meet the five-year deadline.

The agency received no public comment about the proposal to amend §5.53.

The amendment is adopted pursuant to Section 1051.202 of Tex. Occupations Code Annotated ch. 1051, which provides the Board with general authority to promulgate rules necessary to the administration of its statutory responsibilities. The amendment is also proposed pursuant to Section 1053.152 of Tex. Occupations Code Annotated ch. 1053 which requires the Board to establish the qualifications for the issuance of a certificate of registration and specifies passing a registration examination as a qualification for issuance of a certificate of registration.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 305-8535

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SUBCHAPTER K. HEARINGS--CONTESTED CASES

22 TAC §5.244

The Texas Board of Architectural Examiners adopts new §5.244 for Title 22, Chapter 5, Subchapter K pertaining to the suspension of registration as a disciplinary action by the Board. The proposal to adopt new §5.244 was published in the November 19, 2004, issue of the *Texas Register* (29 TexReg 10681). The new rule is being adopted with changes to the proposed version.

The new rule provides guidance to the Board and to administrative law judges when considering whether the probation of a registrant's registration should be active or probated. The rule specifies the possible terms and conditions to practice that may be imposed as a part of probated suspension of registration. The rule supports the imposition of consistent disciplinary action upon registrants.

The Board amended the rule as proposed. The amendment alters one of the criteria for imposing an active, in lieu of a probated, suspension upon a respondent. As proposed, the rule required an active suspension upon a finding that the respondent's violation of a law or a board rule caused a serious threat to the health or safety of the public. As amended, the adopted version of the rule requires the imposition of an active suspension upon a finding that the respondent's violation of the law demonstrated gross negligence, recklessness, or the conduct posed a serious threat to the health or safety of the public.

Under the rule, active suspension, prohibiting practice, is imposed for violations that: demonstrated gross negligence, recklessness, or posed a serious threat to the public health and safety; caused damage to property in excess of $1,000; resulted in a violation of the terms and conditions of a probated suspension; were committed by one with a significant sanction history; or would likely engage in a practice not in compliance with standards normally followed by reasonably prudent registrants.

Probated suspension of registration is applicable to other less serious violations. The rule lists the following terms and conditions that may be imposed to restrict the practice of one whose registration is under a probated suspension: monitoring of practice by mandatory reporting or impromptu visits, directed continuing education, limitations on the scope of practice, required supervision and control of practice by another registrant, and successful completion of a rehabilitation program for the treatment of substance abuse.

The rule specifies disciplinary action that may be taken against a person who practices with an actively suspended registration or who violates the terms and conditions of a probated suspension of registration. The disciplinary action that may be taken for such a violation is prolonged suspension, a more restricted probated suspension, an administrative penalty, or revocation.

As a result of this new rule, the Board and administrative law judges have guidelines to impose terms and conditions of the

suspension of registration that are appropriate under the facts and circumstances of each case. The new rule supports the imposition of the suspension of registration in a manner that is consistent in similar cases.

The agency received no comments concerning the new rule.

The new rule is adopted pursuant to Section 1051.202 of Tex. Occupations Code Annotated ch. 1051, which provides the Board with general authority to promulgate rules necessary to the administration of its statutory responsibilities. The new rule is also adopted pursuant to Section 1051.501 of Tex. Occupations Code Annotated ch. 1051 which grants the Board authority to take enforcement action against a person who violates the laws enforced by the Board. The new rule is also adopted pursuant to Section 1053.251 of Tex. Occupations Code Annotated ch. 1053, which authorizes the Board to suspend registration as a disciplinary action and specifies the terms and conditions that may be imposed upon a probated suspension.

§5.244. Suspension of Registration.

(a) If suspension of a person's registration is the appropriate sanction for a violation of a statutory provision or rule enforced by the Board, the Board and the administrative law judge shall apply the following guidelines to determine whether the suspension will be active or probated:

(1) The Board and the administrative law judge shall impose an active suspension upon a finding that the respondent:

(A) violated a statutory provision or rule enforced by the Board that demonstrated gross negligence or recklessness, or the conduct posed a serious threat to the health or safety of the public;

(B) violated a statutory provision or rule enforced by the Board which caused economic damage to property in excess of $1,000;

(C) committed a violation of a statutory provision or rule enforced by the Board while the respondent's registration was on probated suspension;

(D) has a sanction history including at least two findings by the Board that the respondent engaged in conduct for which the respondent's registration could have been suspended or revoked pursuant to Section 5.242; or

(E) would likely engage in the practice of Interior Design in a manner that does not comply with a standard or practice normally followed by a reasonably prudent Interior Designer under the same or similar circumstances.

(2) In any case in which active suspension is not warranted, the suspension imposed by the Board shall be probated.

(b) A person whose registration is under active suspension may not engage in the Practice of Interior Design. A person whose registration is under active suspension may not Supervise and Control or have Responsible Charge over the Practice of Interior Design by another.

(c) The Board may impose any of the following terms and conditions upon the practice of a person whose registration is subject to a probated suspension:

(1) monitoring of practice, including mandatory submission of information to the Board and random and unannounced visits by personnel of the Board to investigate compliance with the terms of the probated suspension;

(2) directed continuing education on applicable subjects, including ethics training, in excess of the continuing education requirements applicable to all Registrants;

(3) limitations on scope of practice;

(4) mandatory Supervision and Control of practice by another registered Interior Designer; and

(5) successful completion of a rehabilitation program pursuant to section 5.159.

(d) If a person violates the terms of a probated suspension of registration, the Board may:

(1) prolong the period of probated suspension;

(2) impose an active suspension of registration; or

(3) impose additional terms and conditions upon the probated suspension.

(e) If a person engages in the Practice of Interior Design while the person's registration is subject to an active suspension, the Board may impose any or all of the following:

(1) issue an order restraining any further practice by the person;

(2) impose an administrative penalty;

(3) impose an additional period of suspension; or

(4) revoke the person's certificate of registration.

(f) In addition to fulfilling the terms and conditions of a probated or active suspension of registration, a person must fulfill the requirements of Section 5.188 in order to obtain reinstatement of the person's suspended certificate of registration.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 24, 2005.

TRD-200500848
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: March 16, 2005
Proposal publication date: November 19, 2004
For further information, please call: (512) 305-8535

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PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.13

The Texas State Board of Examiners of Psychologists adopts amendments to §463.13, concerning Experienced Out-of-State Applicants without changes to the proposed text as published in the November 26, 2004, issue of the *Texas Register* (29 TexReg 10870).

The amendments are being adopted in order to allow the Board to extend inactive status because of licensee medical necessity.

The adopted amendments will make the rule easier for the licensees and public to follow and understand.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 18, 2005.

TRD-200500782
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: March 10, 2005
Proposal publication date: November 26, 2004
For further information, please call: (512) 305-7700

TITLE 25. HEALTH SERVICES

PART 11. TEXAS CANCER COUNCIL

CHAPTER 701. POLICIES AND PROCEDURES

25 TAC §701.2, §701.21

The Texas Cancer Council adopts amendments to §701.2 and §701.21, concerning the *Texas Cancer Plan* and Historically Underutilized Businesses. Section 701.2 is adopted with changes to the proposed text as published in the December 24, 2004, issue of the *Texas Register* (29 TexReg 11896). Section 701.21 is adopted without changes and will not be republished.

The amendments are adopted to §701.2 *Texas Cancer Plan* to conform the name of the document produced by the Texas Cancer Council to that which is provided in Health and Safety Code, §102.002. The document is adopted by reference, and information is given as to how to obtain a copy of the *Texas Cancer Plan*.

This section is adopted with changes by adding clarifying information to more specifically identify the document being adopted by reference by indicating which edition and publication year of the *Texas Cancer Plan* is being adopted. The other change to the rule as published is a clarification change to the citation to the Administrative Procedure Act, by correcting the reference to the section number as 2001.001 et seq. instead of 2001.01 et seq., and to remove the apostrophe that appears within the citation. The change of the word document to rule indicates that it is rules that the APA governs and not the *Texas Cancer Plan*.

The amendments are adopted to §701.21 Historically Underutilized Businesses to update the name of the agency whose rules the Texas Cancer Council now uses to promulgate the historically underutilized program.

No public comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Health and Safety Code Annotated, §102.0002 and §102.009, which provides the Texas Cancer Council with the authority to develop, implement, and revise the Texas Cancer Plan, and Government Code §2161.003 which requires state agencies to adopt certain HUB rules of the Building and Procurement Commission.

§701.2. Texas Cancer Plan.

The document *Texas Cancer Plan*, 4th Edition, (2005) is adopted by reference. The document is available from the Texas Cancer Council, P.O. Box 12097, Austin, Texas 78711-2097. This rule may be revised and updated after public review and comment as provided by the Administrative Procedure Act, Texas Government Code Annotated §§2001.001 et seq.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 18, 2005.

TRD-200500789
Sandra Balderrama
Executive Director
Texas Cancer Council
Effective date: March 10, 2005
Proposal publication date: December 24, 2004
For further information, please call: (512) 463-3190

TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 7. MEMORANDA OF UNDERSTANDING

30 TAC §7.126

The Texas Commission on Environmental Quality (commission) adopts new §7.126 *without change* to the proposed text as published in the October 29, 2004 issue of the *Texas Register* (29 TexReg 10070), and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

Abandoned and/or deteriorated wells are a potential groundwater contamination source that serve as conduits or channels for contamination to reach groundwater, and larger diameter wells can also be hazardous to human and animal life. The Sunset Advisory Commission Report (February 2002) on the Texas Department of Licensing and Regulation (TDLR) highlighted the lack of manpower to find and close abandoned wells as an issue needing attention. To provide additional resources to find and to properly cap or plug abandoned and/or deteriorated wells, Senate Bill 279, 78th Legislature, 2003, added to the Texas Occupations Code, 1901.257. This section requires the commission and the TDLR to, by rule, adopt or revise a joint memorandum of understanding (MOU) to coordinate efforts of the TDLR, the field

operations staff of the commission, and groundwater conservation districts (GCDs), relating to investigative procedures for referrals of complaints regarding abandoned and/or deteriorated wells. The bill also requires each GCD in which an abandoned and/or deteriorated well is located to join the MOU adopted by the commission and the TDLR and provides that GCDs may enforce compliance with statutes relating to the plugging of abandoned and/or deteriorated wells within their boundaries. This rulemaking is an adoption by reference of the complete text of the adopted MOU that was published in the "Adopted Rules" portion of the January 28, 2005, issue of the *Texas Register* by the TDLR as 16 TAC §76.1011 (Memorandum of Understanding between the Texas Department of Licensing and Regulation and the Texas Commission on Environmental Quality).

SECTION DISCUSSION

New §7.126 is an adoption by reference of the MOU adopted by the TDLR as 16 TAC §76.1011. A description of the adopted MOU in 16 TAC §76.1001 follows.

The MOU begins with a citation to the requirements under Texas Occupations Code, §1901.257(b), which requires the MOU between the two agencies to coordinate the efforts of the TDLR, the field operations staff of the commission, and GCDs, relating to investigative procedures for referrals of complaints regarding abandoned and/or deteriorated wells; under Texas Occupations Code, §1901.257(c), which requires that any GCDs in which an abandoned and/or deteriorated well is located shall join the MOU; and that a GCD may enforce compliance with Texas Occupations Code, §1901.255, concerning abandoned and/or deteriorated wells located in the boundaries of the district. The adopted TDLR rulemaking also indicates that the two agencies have entered into the MOU, and that each GCD in which an abandoned and/or deteriorated well is located is required to join the MOU. Affected GCDs may join by submitting to TDLR a copy of the adopted GCD board action indicating that the GCD has joined this MOU and understands its responsibilities under the MOU and Texas Occupations Code, Chapter 1901.

The adopted TDLR rulemaking outlines the respective responsibilities of each agency and of a GCD that joins the MOU.

TDLR Responsibilities:

The MOU requires that the TDLR will investigate abandoned and/or deteriorated well complaints, including referrals received from the commission's field operations staff, unless the complaint is being investigated by a GCD in coordination with TDLR staff. TDLR has the responsibility to coordinate investigations and enforcement efforts with the appropriate GCD for any complaints regarding wells located within the boundaries of a GCD. When abandoned and/or deteriorated wells are observed while TDLR staff are conducting field investigations inside the boundaries of a GCD, the adopted TDLR rulemaking, which is the MOU, requires that a reasonable effort to obtain the landowners' name, mailing address, and latitude and longitude of the well be made, and that the information be referred to the general manager of the appropriate GCD for investigation and possible enforcement action. The MOU specifies that when an abandoned and/or deteriorated well complaint is received, the TDLR will determine if the well is located within a GCD's boundaries and provide a referral to the general manager of the appropriate GCD for investigation and possible enforcement action. TDLR will provide training and technical assistance to GCD staff and the commission's field operations staff on field recognition of an abandoned and/or deteriorated well. Finally, the adopted MOU contains a requirement for the TDLR to annually report to the commission on the status of all complaints provided to the TDLR under the MOU and the number of wells closed as a result of the commission's abandoned and/or deteriorated well complaint referrals.

Commission Responsibilities:

The adopted MOU requires that when suspected abandoned and/or deteriorated wells are observed by field operations staff while conducting field investigations, information to allow for identification of the well, which may include the landowners' name, physical address, and latitude and longitude of the well, be referred to the TDLR. The adopted MOU requires the commission's field operations staff to make a reasonable effort to obtain information needed for the identification of any abandoned and/or deteriorated well. The adopted MOU also requires the commission to provide to the TDLR an updated list of GCDs as they are confirmed, including boundaries and the name and address of district contacts such as the general manager.

GCD Responsibilities:

The adopted MOU requires that when a GCD receives a referral from the TDLR of an abandoned and/or deteriorated well, the GCD must respond within 14 calendar days informing the TDLR as to whether the GCD will investigate the referral. The adopted MOU provides that after the GCD has been notified by the TDLR or becomes aware of an abandoned and/or deteriorated well, the GCD may investigate the complaint of an abandoned and/or deteriorated well within the boundaries of the GCD and enforce compliance with Texas Occupations Code, 1901.255. The adopted MOU requires a GCD, that performs an investigation related to an abandoned and/or deteriorated well referred by the TDLR, to notify the TDLR regarding the disposition of the investigation. The MOU provides that any GCD enforcement under Texas Occupations Code, §1901.255 and §1901.256, may be coordinated with the TDLR and that a GCD may communicate with the TDLR regarding any phase of the investigation or enforcement action.

The adopted MOU contains a subsection related to referral and investigation requirements which states that for the purposes of the MOU, a "referral" shall constitute information gathered, compiled, and forwarded to the TDLR. Written referrals via e-mail or letter shall utilize the appropriate form, provided by the TDLR, and document information on the abandoned and/or deteriorated well, which may include the name of the landowner possessing the abandoned and/or deteriorated well, the physical address of the landowner, the latitude and longitude of the abandoned and/or deteriorated well, and if possible, a photograph of the well. The adopted MOU requires that following the receipt of a referral from the commission, the TDLR will begin landowner notification procedures or follow up investigation or, if the well is inside the boundaries of a GCD, provide a referral to the general manager of the corresponding GCD for investigation and possible enforcement action to assure compliance with Texas Occupations Code, §1901.255.

The term of the MOU is from the date both the TDLR and the commission adopt the MOU by rule. The MOU provides that the commission or the TDLR may, for any reason, terminate the MOU upon 30 days' notice to the other agency. The MOU also contains a severability statement that should any provision of the MOU be held to be null, void, or for any reason without force or effect, such provision shall be construed as severable from the remainder of this document and shall not affect the validity of

all other provisions, which shall remain in full force and effect. The MOU may be amended through rulemaking at any time by mutual consent of the commission and the TDLR.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule." Furthermore, it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a).

"Major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This rulemaking is to adopt an MOU with the TDLR that will assist the TDLR in plugging abandoned and/or deteriorated wells. The specific intent of the MOU is to coordinate efforts between the commission, the TDLR, and GCDs relating to referrals of complaints regarding abandoned and/or deteriorated wells. The MOU will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

In addition, the MOU does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or adopt a rule solely under the general powers of the agency. The MOU does not exceed a standard set by federal law because coordination of efforts to facilitate the closure of abandoned and/or deteriorated wells is not a federal program. This adoption does not exceed an express requirement of state law because it is required by Texas Occupations Code, §1901.257. This adoption does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. This adoption does not adopt a rule solely under the general powers of the agency, but rather under a specific state law. Finally, this rulemaking is not being adopted on an emergency basis to protect the environment or to reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The commission assessed the takings impact for the MOU in accordance with Texas Government Code, §2007.043. The commission evaluated the rule and performed an assessment of whether the rule constitutes a takings under Texas Government Code, Chapter 2007. The specific purpose of the MOU, as required by Texas Occupations Code, §1901.257, is to coordinate efforts between the commission, the TDLR, and GCDs relating to referrals of complaints regarding abandoned and/or deteriorated wells.

Promulgation and enforcement of the rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the MOU does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the MOU. The MOU merely sets out the requirements of the commission in referring complaints of abandoned and/or deteriorated wells to the TDLR. This act by the commission does not burden, restrict, or limit property rights or reduce the value of land by 25% or more.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed this rulemaking for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the rule is consistent with CMP goals and policies because the rulemaking relates only to groundwater issues, which are not subject to the CMP. The rulemaking will not have direct or significant adverse effect on any coastal natural resource area; the rulemaking will not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the rule will not exceed any standard identified in the applicable CMP goals and policies.

PUBLIC COMMENT

No public comment was received on the proposed rule nor on the proposal by TDLR that was published concurrently.

STATUTORY AUTHORITY

The new section is adopted under Texas Occupations Code, §1901.257, which requires the commission to enter into an MOU with the TDLR and GCDs relating to investigative procedures for referrals of complaints regarding abandoned and/or deteriorated wells. Additionally, the new section is adopted under Texas Water Code, §5.104, which authorizes the commission to enter into an MOU with any other state agency but requires the MOU to be adopted by rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 24, 2005.

TRD-200500851
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: March 16, 2005
Proposal publication date: October 29, 2004
For further information, please call: (512) 239-6087

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TITLE 34. PUBLIC FINANCE

PART 12. STATE EMPLOYEE CHARITABLE CAMPAIGN

CHAPTER 329. ELIGIBILITY CRITERIA FOR STATEWIDE FEDERATIONS/FUNDS AND AFFILIATED ORGANIZATIONS

34 TAC §329.3

The State Employee Charitable Campaign adopts amendments to rule §329.3, concerning 25% administrative cost cap, without changes to the rule amendments as proposed in the December 24, 2004, issue of the *Texas Register* (29 TexReg 11936).

The amendments clarify and specify the type of information that must be included in an application by a charitable organization whose administrative expenses exceed 25% of the organization's annual revenue. This rule provides for consistent and concise reports that address the issues that the SPC will consider when deciding whether to allow an organization a temporary exemption from the 25% cap on administrative expenses.

No public comments were received regarding this rule as proposed.

The section is adopted under Government Code, §659.139, which provides that the State Employee Charitable Campaign (SECC) must be managed fairly and equitably in accordance with the SECC law and the policies and procedures established by the state policy committee. The SPC interprets this statute to authorize the adoption of rules to the extent that the policies and procedures adopted are of general applicability and affect the rights of third parties, namely charitable organizations, local campaign managers, local employee committees, the state advisory committee, the state campaign manager, and state employees. In addition, the SPC is directed by Government Code §659.140(e)(3) to determine the eligibility of organizations to participate in the statewide campaign. The SPC also adopts this rule under Government Code §659.146(b) which authorizes the SPC to grant temporary exemptions from the caps the statute places on administrative expenses. The SPC is required to adopt rules to inform organizations about what information they must provide to meet the requirements of the statute.

The other statute, article, or section affected by the proposed rules is Government Code, §659.146, regarding eligibility criteria for charitable organizations to participate in the state employee charitable campaign.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 18, 2005.

TRD-200500783
Jock Davis
Chair, Policy Committee
State Employee Charitable Campaign
Effective date: March 10, 2005
Proposal publication date: December 24, 2004
For further information, please call: (512) 475-0387

CHAPTER 330. ELIGIBILITY CRITERIA FOR LOCAL FEDERATIONS/FUNDS, AFFILIATED ORGANIZATIONS, AND LOCAL CHARITABLE ORGANIZATIONS

34 TAC §330.3

The State Employee Charitable Campaign adopts amendments to §330.3, concerning 25% administrative cost cap, without changes to the proposed text as published in the December 24, 2004, issue of the *Texas Register* (29 TexReg 11937).

The section is amended to clarify and specify the type of information that must be included in an application by a charitable organization whose administrative expenses exceed 25% of the organization's annual revenue. A new subsection (g) was added.

No public comments were received in response to the proposed rule.

These amendments are adopted under Government Code, §659.139, which provides that the State Employee Charitable Campaign (SECC) must be managed fairly and equitably in accordance with the SECC law and the policies and procedures established by the state policy committee. The SPC interprets this statute to authorize the adoption of rules to the extent that the policies and procedures adopted are of general applicability and affect the rights of third parties, namely charitable organizations, local campaign managers, local employee committees, the state advisory committee, the state campaign manager, and state employees. In addition, the SPC is authorized under Government Code §659.146 (b) to grant temporary exemptions from the caps the statute places on administrative expenses. The SPC is required to adopt rules to inform organizations about what information they must provide to meet the requirements of the statute.

The other statute, article, or section affected by the adopted rules is Government Code, §659.146, regarding eligibility criteria for charitable organizations to participate in the state employee charitable campaign.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 18, 2005.

TRD-200500784
Jock Davis
Chair, Policy Committee
State Employee Charitable Campaign
Effective date: March 10, 2005
Proposal publication date: December 24, 2004
For further information, please call: (512) 475-0387

CHAPTER 331. REVIEW AND APPEAL PROCEDURES FOR STATEWIDE FEDERATIONS/FUNDS AND AFFILIATED ORGANIZATIONS

34 TAC §331.1, §331.3

The State Employee Charitable Campaign adopts amendments to §331.1, concerning administrative review and a new §331.3, concerning eligibility review by the State Policy Committee, without changes to the proposed text as published in the December 24, 2004, issue of the *Texas Register* (29 TexReg 11939).

The amendment and new rule are adopted to notify applicant charitable organizations of the process by which applications will be reviewed to determine whether the applications contain the required documentation, the consequences of incomplete documentation, and to describe part of the process that the SPC will use to determine an organization's eligibility to participate in the SECC.

In previous years certain charitable organizations have submitted incomplete applications and have failed to correct those problems even after having been notified of the problem by the entity conducting the administrative review. The same organizations have then sought SPC approval of the application, sometimes without the missing documentation having been provided to the administrative reviewers by the necessary deadline and sometimes without the necessary documentation having been provided to the SPC by the date of the meeting at which the application is to be considered for approval. These same organizations then have also filed appeals from SPC denials in an attempt to receive another chance to submit the missing documentation. This process has resulted in delays in the processing of applications and in a potential appearance of unfair treatment to those organizations that have submitted timely applications and have complied timely with requests for documentation. The amendment to §331.1 would make the deadlines more meaningful, would avoid the necessity for the SPC to review incomplete applications, resulting in less time wasted in handling incomplete applications. The rules would subject all organizations to the same application deadline, would give all organizations the same amount of time within which to submit missing documentation, and would equally affect all organizations that fail to meet those requirements.

The new section §331.3 notifies applicants of the method that SPC will use in reviewing the 25-word description required in all applications and the consequence of an applicant failing to comply. The SPC has determined that denial of applications that contain descriptions of more than 25 words in length is appropriate because of space limitations in the materials; fairness to compliant organizations; efficient use of the time of the SPC and the SCM; and avoidance of inaccurately describing the work of an organization or describing the work differently than the organization intended. This rule will help ensure that the time and expense spent by state employees serving on the SPC in reviewing applications, conducting meetings and hearing appeals from decisions will be limited to legitimate applications and appeals. United Ways of Texas, 3724 Executive Center Drive, Suite 210, Austin, Texas 78731.

No public comments were received in response to the proposed rule.

These amendments are adopted under Government Code, §659.139, which provides that the State Employee Charitable Campaign (SECC) must be managed fairly and equitably in accordance with the SECC law and the policies and procedures established by the state policy committee. The SPC interprets this statute to authorize the adoption of rules to the extent that the policies and procedures adopted are of general applicability and affect the rights of third parties, namely charitable organizations, local campaign managers, local employee committees, the state advisory committee, the state campaign manager, and state employees.

The other statute, article, or section affected by the adopted rules is Government Code, §659.146, regarding eligibility criteria for charitable organizations to participate in the state employee charitable campaign.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 18, 2005.

TRD-200500785
Jock Davis
Chair, Policy Committee
State Employee Charitable Campaign
Effective date: March 10, 2005
Proposal publication date: December 24, 2004
For further information, please call: (512) 475-0387

CHAPTER 332. REVIEW AND APPEAL PROCEDURES FOR LOCAL FEDERATIONS/FUNDS, AFFILIATED ORGANIZATIONS, AND LOCAL CHARITABLE ORGANIZATIONS

34 TAC §332.1, §332.3

The State Employee Charitable Campaign adopts amendments to §332.1, concerning administrative review and a new rule §332.3, concerning eligibility review by the Local Employee Committee (LEC), without changes to the proposed text as published in the December 24, 2004, issue of the *Texas Register* (29 TexReg 11940).

These amendments and new rule are adopted to delete unnecessary language regarding the enforcement of rule §332.1 and to describe part of the process that the LEC will use to determine an organization's eligibility to participate in the SECC.

The amendment to §332.1 deletes the word "rigidly" as unnecessary. The deletion of the word is not intended to imply and should not be interpreted to imply that the level with which the LEC reviews application will be lessened from the current practice. Instead, the word "rigidly" is being deleted because it may imply a level of enforcement that is difficult to quantify; the use of that word, therefore, may be too vague in its current usage and is unnecessary.

The new rule §332.3 notifies applicants of the method that LEC will use in reviewing the 25-word description required in all applications and the consequence of an applicant failing to comply. The SPC has determined that denial of applications that contain descriptions of more than 25 words in length is appropriate because of space limitations in the materials; fairness to compliant organizations; efficient use of the time of the LEC and the LCM; and avoidance of inaccurately describing the work of an organization or describing the work differently than the organization intended.

No public comments were received in response to the proposed rule.

These amendments are adopted under Government Code, §659.139, which provides that the State Employee Charitable Campaign (SECC) must be managed fairly and equitably in accordance with the SECC law and the policies and procedures established by the state policy committee. The SPC interprets this statute to authorize the adoption of rules to the extent that the policies and procedures adopted are of general applicability and affect the rights of third parties, namely charitable organizations, local campaign managers, local employee committees, the state advisory committee, the state campaign manager, and state employees.

The other statute, article, or section affected by the adopted rules is Government Code, §659.146, regarding eligibility criteria for charitable organizations to participate in the state employee charitable campaign.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 18, 2005.

TRD-200500786
Jock Davis
Chair, Policy Committee
State Employee Charitable Campaign
Effective date: March 10, 2005
Proposal publication date: December 24, 2004
For further information, please call: (512) 475-0387

CHAPTER 333. CAMPAIGN MATERIALS

34 TAC §333.7

The State Employee Charitable Campaign adopts amendments to §333.7, concerning campaign materials guidelines, without changes to the proposed text as published in the December 24, 2004, issue of the *Texas Register* (29 TexReg 11940).

These amendments are adopted to conform the language of the rule to other SPC rules that address the 25-word description that is required in all applications; to make a grammatical correction; and to clarify that the requirements in subsection (d) apply to the mini-directory.

The SPC has determined that denying approval of materials that contain descriptions of more than 25-words for an organization is appropriate because of space limitations in the materials; fairness to compliant organizations; efficient use of the time of the SPC and the SCM; and avoidance of inaccurately describing the work of an organization or describing the work differently than the organization intended.

No public comments were received in response to the published rule.

These amendments are adopted under Government Code, §659.139, which provides that the State Employee Charitable Campaign (SECC) must be managed fairly and equitably in accordance with the SECC law and the policies and procedures established by the state policy committee. The SPC interprets this statute to authorize the adoption of rules to the extent that the policies and procedures adopted are of general applicability and affect the rights of third parties, namely charitable organizations, local campaign managers, local employee committees, the state advisory committee, the state campaign manager, and state employees.

The other statute, article, or section affected by the proposed rules is Government Code, §659.140, regarding the duties of the SPC, including the duty to approve campaign materials.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 18, 2005.

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Jock Davis
Chair, Policy Committee
State Employee Charitable Campaign
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For further information, please call: (512) 475-0387

TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 21. RIGHT OF WAY

SUBCHAPTER C. UTILITY ACCOMMODATION

The Texas Department of Transportation (department) adopts the repeal of §§21.31-21.51 and simultaneously adopts new §§21.31-21.41, concerning utility accommodation. New §§21.31, 21.33, 21.37, 21.40, and 21.41 are adopted with changes to the proposed text as published in the November 12, 2004 issue of the *Texas Register* (29 TexReg 10487). The repeal of §§21.31-21.51 and new §§21.32, 21.34-21.36, 21.38, and 21.39 are adopted without changes to the proposed text as published in the November 12, 2004 issue of the *Texas Register* (29 TexReg 10487) and will not be republished.

EXPLANATION OF ADOPTED REPEALS AND NEW SECTIONS

Existing §§21.31-21.51 provide the current regulations for the accommodation of utilities on highway right of way. The Texas Transportation Commission (commission) has repealed §§21.31-21.51 and adopted new §§21.31-21.41 in a revised form to: reorganize the rules for clarity; allow the use of updated utility construction methods and materials; and improve the state's management of its right of way by requiring a better quality of plans and record drawings for utility installations. Improved utility location information will allow the earlier identification and resolution of utility conflicts with transportation projects prior to the highway construction letting.

New §21.31 defines words and terms used in this subchapter. The definitions are updated from the repealed language for clarity of engineering terms, new utility procedures and processes, job functions, and occupational and departmental titles.

New §21.32 is a statement of the purpose of the subchapter and is reworded for clarity.

New §21.33 describes the types of facilities to which the subchapter applies. New subsections have been added to make the subchapter applicable to utility lines not specifically covered elsewhere in the subchapter, according to the nature of the line, and to allow each District Engineer to make special requirements based on factors unique to the area. These changes will allow the department to better protect the right of way and to better accommodate utilities by making allowances for unique and unforeseen circumstances.

New §21.34 describes the scope of the subchapter and includes new language describing the means by which a district may impose supplemental requirements and providing a means by which a utility may appeal a supplemental requirement. Because conditions may differ greatly from area to area within the state, these additions will allow the districts to better manage their right of way on a local level, while protecting utilities by providing for a higher level of review of district decisions.

New §21.35 includes the requirements for requesting, and criteria for consideration of, an exception to the provisions of this subchapter. Providing for exceptions allows the department to better meet the needs of utilities for which the requirements of the subchapter would impose extreme hardship.

New §21.36 describes the legal authority of utilities to install lines on state highway right of way. This section is included for clarity.

New §21.37 describes the design requirements for a utility installation. In order to allow the department to more efficiently manage and protect its right of way, new language has been added restricting the locations of utilities within the right of way and adding new requirements regarding the submission of plans, including a provision for a district to require signed and sealed plans under certain circumstances, the design of utility tunnels and bridges, and the joint use of highway and utility structures. More specific requirements are also added relating to the removal, trimming, or replacement of trees, bushes, shrubbery, or any other aesthetic features.

New §21.38 describes the standards and requirements for the construction and maintenance of utility lines on the right of way. This section includes expanded requirements for revegetation, traffic control, work restrictions, and site cleanup. These changes are designed to protect the safety of the traveling public as well as to protect the right of way from damage.

New §21.40 describes the requirements for the installation of underground utilities on the right of way. The section includes new and expanded requirements for standards for materials, conditions under which underground utilities may be placed on the right of way, multiple conduits, abandonment, location and placement, and markers. These changes are designed to allow the department to better manage its right of way and to better protect the right of way, as well as providing better protection for utility lines.

New §21.41 describes the requirements for the installation, maintenance, and relocation of overhead power and communication lines on the right of way. This section includes expanded and new requirements for construction, location, and marking of overhead power and communication lines to protect the safety of the traveling public and to allow the department to better manage its right of way.

COMMENTS

A public hearing was held on November 23, 2004 to receive comments, views, or testimony concerning the proposed repeal and new sections. Various oral and written comments were received. Comments in support of the new rules were received from Associated General Contractors; Cap Rock Telephone Cooperative, Inc.; and Texas Statewide Telephone Cooperative, Inc. Comments opposing the new rules were received from Atmos Energy Corporation; Houston Pipeline Company; City Public Service Board of San Antonio; City of Austin d/b/a Austin Energy; Kerrville Public Utility Board; New Braunfels Utilities; CenterPoint Energy; Southwestern Bell Telephone, L.P.; TXU Electric Delivery Company; Texas Telephone Association; East Texas Cooperative; and Kinder Morgan, Inc. Comments and responses are as follows.

§21.31. Definitions.

The department is adopting §21.31 with changes by adding new definition (8), Certified as-installed construction plans. This added definition clarifies the term used in this subchapter.

Comment: Two commenters noted that the term "engineering drawings" in the definition of "As-Built plans" would require that all submitted drawings contain a professional engineering seal.

Response: The department agrees with this comment and the word "engineering" has been deleted from this definition.

Comment: One commenter suggests that the definition of "Gathering line" should track the definition found in Chapter 49, Code of Federal Regulations, Part 192, so that the potential common carrier status of such a line could be recognized.

Response: The department disagrees with exclusively using ownership status to define the term. Unlike the federal definition, the department's definition focuses on both the ownership and functionality of the facility located within state right of way. Those lines that deliver raw product drawn from individual production facilities to larger pipelines that commingle the product from multiple facilities are not eligible for location within state right of way.

§21.33 Applicability.

Comment: Four commenters stated that the application of the rules should be limited to those highways receiving federal aid or designated as controlled access facilities.

Response: The department disagrees with this comment because this would prevent the department fro effectively managing its right of way. The department's duty to ensure roadway safety extends to all roadways on the state highway system. Exclusion of state highways, farm-to-market roads, and ranch roads would subject the facilities, the traveling public, and other occupying utilities to unnecessary risk.

Comment: Five commenters said §21.33 would require utilities to retrofit facilities currently installed within state right of way and that facilities that are currently operating under earlier regulations should be exempt from new regulations requiring expensive in-place modifications. One commenter requests the removal of the last sentence in subsection (b) to avoid this result.

Response: The department agrees with this comment and has deleted the final sentence originally proposed in subsection (b).

Comment: One commenter stated that §21.33 is an overall general statement of applicability whereas the last sentence in subsection (c) specifically applies to high-pressure gas lines. The subsection requires that all lines carrying harmful materials comply with the safety provisions applicable to high pressure lines. The sentence should be deleted or amended to acknowledge, as in federal law, a distinction in safety requirements between high and low pressure gas facilities.

Response: The department disagrees with the comment as the sentence is a restatement of current practice and policy. Due to the nature of the substances being carried in the lines, the department requires the higher standard of protection afforded with high pressure lines to ensure the safety of miscellaneous lines

not specifically addressed in this subchapter. Specific requirements are included for low pressure gas lines.

Comment: Five commenters noted that District Engineers should not have the authority to impose special requirements on specific installations or locations. This allowance conflicts with federal regulations that require the department to maintain reasonable uniformity in its accommodation rules. A failure to specify installation requirements does not provide utilities with proper notice regarding the requirements to comply with the law, and violates due process concerning their property rights.

Response: The department disagrees with this comment as this rule is a restatement of current practice and policy. As stated in the rule, districts may impose special requirements on utility installations due to a multitude of specific factors. The department complies with federal law via the uniform requirements contained in these rules; however, it is impractical to attempt to memorialize by rule every geographic or site specific variable, and thus every installation requirement that may be encountered throughout the state. In order to protect the state highway system, the department must ensure that the highway facility, the traveling public, and the occupying utilities remain safe. To this end, District Engineers have authority to prescribe additional requirements associated with those safety concerns.

As stated in §21.34, utilities having concerns regarding the requirements for a particular installation may appeal those requirements to the Maintenance Division or Right of Way Division. The department also disagrees with the commenters' statement regarding property rights. The Legislature has merely granted utilities the right to voluntarily occupy state right of way; no property rights are transferred in this process.

§21.34. Scope.

Comment: The department received two comments stating that the district supplemental requirements do not afford the degree of consistency and specificity needed for those utilities operating on a statewide basis and constitutes ad hoc rulemaking by the District Engineers. The discretion given to District Engineers allows for the favorable treatment of one utility over another. One of the commenters recommends either striking the last three sentences of the rule, including the requirement that if industry standards afford a higher degree of protection then that standard supersedes department rule, or better defining the appeal process.

Response: The department disagrees with this comment as §21.34 is a restatement of current practice and policy. As stated in the rule, districts impose special requirements on utility installations due to a multitude of specific factors. It is impractical to attempt to memorialize by rule every geographic or site specific variable, and thus every installation requirement, that may be encountered throughout the state. In order to protect the state highway system, the department must ensure that the highway facility, the traveling public, and the occupying utilities remain safe. To this end, a District Engineer has authority to prescribe additional requirements associated with safety concerns, but only if these geographic variables expose the facility, the traveling public, or other utility installations to a higher degree of risk.

Generally, all department safety standards parallel those recommended by the American Association of State Highway and Transportation Officials and other national highway organizations. However, it is well recognized that utility industry organizations occasionally recommend more stringent safety standards than the department. For the maximum safety of all concerned, the department desires utilities to adhere to their own industry's stricter standards when applicable.

The method of appeal of a District Engineer's accommodation requirements will allow an independent fact finder to determine the appropriateness of that requirement. Such appeal will also serve to avoid any disparity of treatment of utilities within a district.

§21.35. Exceptions

Comment: Four commenters requested a clarification of what constitutes "extreme hardship or unusual conditions" that would justify a request for exception under subsection (b). The commenter also requests that a due process procedure be implemented so that utilities may demonstrate such hardships or unusual conditions.

Response: Section 21.35(b) is a readoption of repealed §21.35(c). The criteria for granting an exception are stated in new §21.35(c).

Comment: A commenter stated that §21.35(c)(2) should be amended to exclude as a determining factor those instances in urban areas where access to a utility's facilities are exclusively provided by the mainlanes of a freeway or its connecting ramps.

Response: Section 21.35(c)(2) is a readoption of repealed §21.37(c)(2). Even though the department agrees with the comment, no adjustment to subsection (c) is necessary. Exceptions for these occurrences may be granted by the department after the circumstances are evaluated under this section.

Comment: Five commenters noted that it is impossible for a utility seeking an exception to comply with §21.35(c)(3) since the utility cannot prove that the exception will not cause interference with a "future expansion" of a highway. Such interference with future expansions should be limited to currently planned expansions.

Response: Section 21.35(c)(3) is a readoption of repealed §21.37(c)(3). The department disagrees with the comment. This interpretation of the subsection would nullify its use as criteria for an exception. The department cannot be limited to documented planned expansions of a highway facility when considering an exception. The ability to use reasonable consideration of possible future expansions is prudent for the protection of the highway system and to avoid needless utility relocations in the future.

Comment: Four commenters said the provision in subsection (c)(4), stating that for an exception to be granted, a utility must show that an alternative location would be "contrary to the public interest" is vague. A utility would not know what constitutes the "public interest," what types of impacts to the alternative location would be relevant, or how they would be measured and weighed by the department.

Response: The department disagrees with the comment. Subsection (c)(4) is a readoption of repealed §21.37(c)(4), under which the department has historically operated. As written, this language allows reasonable consideration of the many site specific factors that would affect what is in the public interest. A firm definition would only serve to restrict the factors that could be considered.

§21.36. Rights of Utilities.

Comment: One commenter requested the deletion of the phrase "subject to highway purposes" as this is in conflict with Utilities Code, Section 181.042.

Response: The department disagrees with the comment. Statutory rights granted utilities are not absolute and are subordinate to the principal reason for the creation of public roads. "The main purpose of roads and streets are for travel and transportation, and while public utilities may use such roads… such uses are subservient to the main uses and purposes of such roads and streets." *City of San Antonio v. Bexar Metro. Water Dist.*, 309 S.W.2d 491, 492 (Tex. Civ. App.-San Antonio 1958, writ ref'd); *accord City of San Antonio v. United Gas Pipe Line Co.*, 388 S.W.2d 231, 234 (Tex. Civ. App.-San Antonio 1965, writ ref'd n.r.e.). Section 21.36 is a correct statement of Texas law.

§21.37. Design.

Comment: One commenter stated that the department does not have the legal right to approve the manner of construction or installation in which a utility performs its relocation work as stated in the second sentence of §21.37(a)(1).

Response: The department disagrees with this comment as it has such authority over the manner in which a utility installs or maintains its facility if there is an impact on the safety of the facility or traveling public. The third sentence of §21.37(a)(1) establishes the safety factors the department will use to evaluate the manner in which an installation is conducted.

Comment: One commenter suggested adding Title 16, Texas Administrative Code, Chapter 8- Pipeline Safety Regulations, to the list of safety codes in §21.37(a)(1).

Response: The department appreciates the commenter's concern regarding pipeline safety; however, it believes that the current list of codes is sufficient to ensure the safety of the highway facility, the traveling public, and other occupying utilities.

Comment: Four commenters stated the phrase "acceptable to the department" in §21.37(a) allows the department to apply standards for design other than those required by state or federal law or those specifically enumerated by the proposed rules.

Response: The department disagrees with this comment. The language is a general statement of the intent of the rule rather than a standalone requirement and does not operate to impose any requirements other than those specifically provided for in this subchapter. The design of a utility facility must be acceptable to the department in order to preserve the safety and free flow of traffic, structural integrity of the highway facility, ease of highway maintenance and appearance of the highway.

Comment: Two commenters stated that a utility cannot locate lines to minimize the need for adjustment for future highway projects as stated in subsection (b)(1). Since it would be impossible for utilities to locate lines subject to an unknown future expansion, they requested the removal of the term.

Response: The department disagrees with the comment. This interpretation of §21.37(b)(1) would nullify its use as criteria for the proper location of a utility line. The department cannot be limited to documented planned expansions of a highway facility when considering a utility facility's location within the right of way. The ability to use reasonable consideration of possible future expansions is prudent for the protection of the highway system and to avoid needless utility relocations in the future. A utility may coordinate a proposed location with the department prior to the design stage.

Comment: Four commenters stated that subsection (b)(2) of §21.37 fails to enumerate the conditions upon which the department will allow longitudinal installations. The use of the phrase "if allowed" in the subsection gives the department the authority to indiscriminately deny longitudinal installations.

Response: The department disagrees with the comment. The phrase "if allowed" reserves to the department its authority to deny any utility installation that would create a hazard to the highway facility, traveling public, or other utility installations.

Comment: Six commenters stated that the requirement that all new utility lines that cross the highway shall be installed at a 90 degree angle to the centerline of the highway is too stringent. This requirement can be financially burdensome and potentially pose a safety hazard. The department should either delete the language or replace it with language giving utilities the ability to achieve as close to a 90 degree angle as practical.

Response: The department disagrees with this comment. The 90 degree angle minimizes the length of pavement that must be crossed, which reduces potential damage to the pavement and the length of the bore, as well as making it easier to locate the utility after it is installed. The rule requires lines to cross at "approximately" 90 degrees, which provides adequate flexibility for utilities. Utilities that find the 90 degree requirement impractical may request an exception under §21.35.

Comment: A commenter noted the broad wording contained in §21.37(b)(4) giving the department the authority to determine appropriate horizontal clearances would allow the department to force utilities to bury their lines when unnecessary. This authority has already been primarily delegated to the Public Utility Commission.

Response: The department disagrees with this comment. Since the department's authority to regulate the manner of utility installations is limited to instances affecting the safety of the highway facility or the traveling public, the department would have no authority to require the underground installation of electric facilities except under such circumstances. This rule simply disallows the placement of fixed objects in the horizontal clearance, an area established in accordance with national American Association of State Highway and Transportation Officials (AASHTO) standards to allow a driver to recover control over his or her errant vehicle. As indicated in subsection (b)(4), the department has established a Horizontal Clearance Policy to assist utilities in installing their facilities in a safe manner.

Comment: One commenter suggests adding subsurface engineering to the design requirements in §21.37(b)(5).

Response: The department disagrees with this comment because requiring a utility to conduct subsurface engineering could impose an unreasonable burden and expense.

Comment: Six commenters noted that a utility cannot comply with §21.37(b)(5) because it does not contain a mechanism for a utility planning a new installation to know when another utility has previously filed plans showing its installations, nor does it have control over whether the department will supply such plans. Additionally, a utility cannot install its facilities subject to "approved future utilities" that may be installed within the right of way as such is an unknown. One of the commenters requested inclusion of language mandating department compliance in delivering information concerning prior utility installations.

Response: The department disagrees with the comments. Utility facility occupation of department right of way, although statutorily allowed, is a voluntary exercise on the part of the utility. The subsection establishes that it is a utility's responsibility to conduct due diligence to determine whether prior installations have occurred. To maintain the safety of all concerned, it is in the department's best interest to assist utilities by providing whatever information it may have; therefore, language mandating compliance would be cumulative of current practice. The requirement that a new installation must be compatible with future installations means only that the new installation must use minimal right of way area so that space is available for other future utility installations.

Comment: Two commenters stated that subsection (b)(6) of §21.37 can be read to exclude utilities entirely from controlled access highways because the department could deny installation to any utility whose maintenance might require access from the mainlanes or ramps. The commenter suggests amendment of the subsection to state that installations should be made in such a manner that maintenance is not necessary from mainlanes or ramps. It is also recommended that discretion for exceptions to this rule be given to the districts.

Response: The department disagrees with the comments. Utilities that elect to install facilities along controlled access highways or freeways do so subject to the safety of the traveling public. Subsection (b)(6) makes clear that installations requiring maintenance that would subject the traveling public to an increased risk, as would occur on controlled access highways or freeways, are generally prohibited. However, new §21.35, Exceptions, allows a utility to seek an exception from the department to allow such installations. Having exceptions considered at the division level rather than at the district level allows for better consistency statewide.

Comment: Three commenters stated that §21.37(b)(7) would require that utility lines currently located in the center median, outer separation, or beneath existing pavement be relocated. This subsection would create an unreasonable economic burden because those installations currently located in such areas are not a safety issue so their relocation is not warranted. There is an additional logistical burden since many urban areas cannot accommodate installations in any other areas. The commenters request that the current installations be allowed to remain and that the department grant exceptions to this subsection if warranted.

Response: The department, being an agency of the state, possesses no authority to act in a manner that exceeds its statutory grant from the Legislature. The authority to require the relocation of a utility's facility is limited to those circumstances involving an improvement to the state highway system, or an existing installation that is deemed unsafe. As such, the department possesses no legal authority to enforce a rule that requires a utility to relocate its facilities from their current location absent the occurrence of one of the two above reasons. Therefore, the only legal application of §21.37(b)(7) would be that a utility would be required to relocate its facility only if an improvement to the state highway system were made. New §21.35, Exceptions, allows a utility to seek an exception from the district to allow the installations contemplated by this subsection.

Comment: Six commenters stated that the first sentence in subsection (c) of §21.37 should be deleted. The sentence illegally assigns occupying utilities the responsibility to protect the public investment in the highway and maintain public safety.

Response: The department disagrees with this comment. The sentence does not assign a general duty of care to utilities. Consistent with the heading of this subsection, "Plans," and the department's duty to protect the highway facility and the traveling public, a utility will be held accountable for the submission of plans that are sensitive to these duties. Those plans that do not meet these minimum criteria for occupation will be returned to the utility for correction.

Comment: Five commenters said that §21.37(c)(1), requiring that utility installations be "of durable materials" should only apply to those installations made subsequent to the adoption of these rules and not to existing facilities. The requirement of "satisfactory design and condition" does not give adequate guidance regarding the department's requirements. The phrase that a facility should be "free from routine service or maintenance" is vague and possibly dangerous, and determination of maintenance needs should be left exclusively to the utility. One of the commenters stated that authority to review pipeline records, referring to the application of the subsection to existing facilities, rests with the Railroad Commission of Texas.

Response: This subsection is a readoption of repealed §21.38(b). As stated in new §21.32, the purpose of these rules is to provide standards for the installation, adjustment, and maintenance of utility facilities. This new subchapter does not apply to existing facilities unless the utility is performing maintenance or adjusting its facility or the facility creates a safety hazard to the highway or the traveling public. No review of existing pipeline records would be required. The requirement that existing utilities be of "satisfactory design and condition" in the opinion of the district refers to the possibility that a utility facility may be discovered to have failed in some manner, such as a leak or a collapsed carrier or encasement line. That an installed utility should be "free from routine service or maintenance" is not an absolute prohibition; however, acknowledging that utility maintenance on the right of way creates a potential hazard to the traveling public, plans submitted to the department for the installation of facilities should attempt to minimize maintenance needs.

Comment: Four commenters requested clarification of the requirement in §21.37(c)(2) that utilities shall avoid disturbing existing drainage courses. This requirement could be interpreted to prohibit trenching across drainage courses. The commenter wants a revision changing the requirement to "whenever possible."

Response: The department disagrees with the comment. It is not necessary to further clarify the section. The rule does not prohibit disturbing drainage courses, but only requires utilities to avoid doing so. To ensure the protection of the highway system and the traveling public, the department has installed multiple flood control facilities throughout the state. A utility installation that interferes with the planned drainage courses risks flooding and injury. Plans submitted to the department for the installation of facilities should be drawn so that the facility, and its installation avoids disturbing current drainage courses.

Comment: One commenter interpreted §21.37(c)(3) to require utilities to submit utility plans that contemplate and accommodate future unknown highway projects or other utility installations.

Response: The department disagrees with the comment. The requirement that the expansion of an existing installation must minimize interference with future installations means only that

the expansion should be designed to use minimal right of way area so that space is available for other future utility installations. The department agrees that a utility could only reasonably be held to the standard of planning a facility expansion subject to documented future highway projects.

Comment: A commenter suggested making it an additional requirement to submit a traffic control plan.

Response: The department disagrees with this comment. Under current regulations, a traffic control plan must be filed by a utility if its installation or maintenance will affect the safe flow of traffic on a highway facility.

Comment: Several comments were received against the inclusion of "vertical elevations" in plan requirements contained in §21.37(c)(4), and the discretion of the department to require utilities to supply signed and sealed as-built plans included in subsection (c)(5)&(6). The commenters were against these provisions because they would require utilities to employ licensed professional engineers or surveyors to sign and seal facility plans. The requirement of signed and sealed plans is seen as unnecessary, time consuming, cost prohibitive, and of minimal benefit.

Response: The department disagrees with these comments. Vertical elevations are needed rather than depths of cover due to the potential for erosion or siltation over time that will change the depths. Having the elevation will greatly aid department personnel, highway contractors, utilities and utility contractors in determining the location of existing utilities when excavating on the right of way. This will help provide protection against potential damage to utilities.

Due to the costs associated with the purchase of additional property in many urban areas, the department must make optimal use of existing right of way when making expansions to the state highway system. This need places pressure upon the areas available for use by utilities for new installations. Texas law does not authorize the department to purchase additional right of way for use by utilities; therefore, to maintain an adequate safety factor for the highway, its users, and occupying utilities, the department must be increasingly certain of which utilities are buried and their location. The inclusion of signed and sealed plans in these subsections helps ensure the department and utilities that future uses of the highway facility may be done in a safe manner. Although the department recognizes the cost burden that must be borne by the utilities, the cost and inconvenience is small when compared to the increased safety of the public and the cost of utilities acquiring their own right of way.

The department has taken precautions in §21.37(c)(6) against arbitrary and capricious determinations by a district for the need of signed and sealed as-built plans by requiring a district to justify the need to the Maintenance Division or Right of Way Division prior to imposing the requirement.

Comment: One commenter stated that the "traffic safety and access procedures" that the department lists as part of a utility's plans are actually done prior to starting construction and are not part of the construction plans.

Response: The department agrees with this comment and has deleted the requirement from the rules.

Comment: One commenter noted that the requirement of signed and sealed plans addressed in subsection (c)(4)(5)&(6) of §21.37 conflicts with Occupations Code, §§1001.058 & 1001.061. Those sections state that the employees of utility and telephone companies are not subject to the Texas Engineering Practice Act, and that the requirement of this subsection is contrary to those provisions.

Response: The department disagrees with this interpretation. Although the selected statutes exclude utility employees from complying with the Texas Engineering Practice Act, they do not exclude utility companies from complying with the requirements of the department when the utility is occupying state right of way. Note especially that Occupations Code, §1001.058, does not exclude from the Texas Engineering Practice Act an employee who has final authority over engineering designs and plans. The department is adopting §21.37(c)(5) with changes. The language in paragraph (5) has been reworded for clarification purposes only.

Comment: Five comments were received regarding §21.37(d)(1)(C)&(G) stating that the umbrella requirement that all utilities comply with the safety provisions of these subparagraphs is too broad because the provisions are not applicable to their type of utility.

Response: The subsection does not require safety measures that are inapplicable to particular utilities, but act as a general instructional tool to be used by utilities wishing to occupy department right of way. New §21.35 contains criteria for the department to grant exceptions where needed.

Comment: One commenter stated that the provision in §21.37(d)(1)(D) that requires additional protective measures for pipelines that are not encased should be amended so that the determination of adequate safety measures is left to the utilities.

Response: The department disagrees with this comment. The department is charged with maintaining the safety of the highway facility and the traveling public. What constitutes adequate safety measures on the right of way must be subject to department scrutiny, and ultimately, department determination. Discretion to allow exceptions to this rule is given to the department pursuant to §21.35, Exceptions.

Comment: One commenter requested the department join a one call notification center in lieu of subsection (d)(1)(I) of §21.37 that requires the utility give the department 48-hour notice prior to engaging in maintenance operations. Another commenter stated that the requirements of subsection (d) are overly burdensome for minor maintenance operations.

Response: The department disagrees with this comment. The one call notification centers only provide notices of some excavations. Shallow excavations and above ground work are not included. Additionally, the department has the duty to ensure the safety of the traveling public. This duty extends to insuring that all utility installations on highway right of way are conducted with the utmost safety. The notification requirements of this subsection will allow the department sufficient time to determine if the installation is a potential hazard to the traveling public and to recommend safety measures.

Comment: Comments were received that §21.37(d)(2) requires that a utility that owns an easement to cross a highway must give up that easement and locate in a department utility tunnel or bridge. This requirement impermissibly forces a utility to divest itself of a property right. Another commenter states that the subsection requires the utility to bear the expenses of this move, whereas it is potentially reimbursable by the department.

Response: The department disagrees with these comments. A utility possessing an easement has a constitutionally protected

property interest and cannot be divested of it without proper compensation. This subsection contemplates the use of utility tunnels or bridges whenever feasible and does not state that the use of a utility tunnel or bridge is mandatory, but that "consideration should be given" to such structure. Reimbursement of relocation costs, if any, for a utility to install its lines in such a structure would be subject to state law.

Comment: One commenter requests that the word "new" be added to §21.37(e)(1)(C) to reflect that new lines may not be attached to bridges without the approval of the executive director. The commenter is actually referring to subsection (e)(2)(C) with this comment.

Response: The department agrees with this comment and has amended this subsection to clarify its intent.

Comment: Five commenters stated that subsection (e)(2)(D) of §21.37 requires that power lines that carry greater than 600 volts will not be permitted on bridges under any condition. The commenters also stated that districts should have the discretion to allow greater voltages when no reasonable option is available to the utility, such as when crossing lakes or rivers.

Response: The department agrees with this comment and has deleted the phrase, "under any condition." Should a utility need to attach a line with greater than 600 volts to a bridge, the utility may apply for an exception under §21.35, Exception.

Comment: One commenter noted that should a pipeline utility request permission to attach a pipeline to a proposed bridge, §21.37(e)(2)(E) states that the cost will be borne by the utility. These rules are subject to state law governing utility reimbursements.

Response: The department disagrees with this comment. By referring to "proposed bridges," the subsection pertains to only new attachments. Reimbursement for utility relocation costs will continue to be governed by state law.

Comment: Eight commenters stated that federal and state utility laws determine the method and extent of vegetation management for utility installations. Section 21.37(f), which requires department notification and approval prior to a utility engaging in vegetation management, impermissibly infringes upon these laws.

Response: The department disagrees with this comment. Under federal and state safety restrictions, the department maintains a clear zone around all highways upon which all vegetation that is a hazard to the traveling public is removed. Vegetation that is permitted on the right of way is state property. An occupying utility has no property right upon which to base a unilateral removal of this asset. The department will seek to strike a balance between a utility's industry standards and its duty to protect state assets.

§21.38. Construction and Maintenance.

Comment: Four commenters stated that subsections (a)(2) and (c)(1) of §21.38 should be deleted because they illegally assign occupying utilities the responsibility to protect the public investment in the highway facility.

Response: The department disagrees with this comment. The subsections do not assign a general duty of care to utilities. Pursuant to the department's duty to protect the highway facility and the traveling public, and utilities' status as an occupier of the right of way, a utility will be held accountable for construction and maintenance activities that provide the highest level of safety for both. Those activities that subject the facility and the public to unreasonable risk will not be allowed.

Comment: Five commenters suggested the department join a one-call notification center for utilities to notify the department prior to facility maintenance. Another commenter states that the 48-hour notice requirement of §21.38(a)(3) is unduly burdensome.

Response: It would not be appropriate for the department to join a one-call notification center because it is not a utility. Additionally, the department has the duty to ensure the safety of the traveling public. This duty extends to ensuring that all utility installations on highway right of way are conducted with the utmost safety. The notification requirements of this subsection will allow the department sufficient time to determine if the installation is a potential hazard to the traveling public and to recommend safety measures.

Comment: One commenter wants to amend §21.38(a)(4), the general prohibition on cutting into pavement or riprap without department permission, to allow cutting with a "prior written agreement" with the department or if the utility possesses a "right".

Response: If a utility has a "prior written agreement" with the department, the utility already has permission prescribed by this subsection. The department assumes that, by "right," the commenter is referring to a property right. In the event that the department is occupying a utility's property interest, the department and utility must execute a Utility Joint Use Agreement prior to highway construction that would define the rights and responsibilities of each. This would also serve as a "prior written agreement" providing the utility with necessary authority.

Comment: One commenter asked whether the provision of §21.38(a)(4), that states that utilities may not cut into the pavement or riprap without written permission, applies to driveways or just the pavement of the highway itself.

Response: Although the department issues permits to allow the construction of driveways accessing the state highway system, the department generally does not have physical ownership of the structures. To ensure the safety of all concerned, individual districts should be consulted to determine if cutting would be allowed in those areas where driveways cross department right of way.

Comment: Five commenters suggested, under §21.38(a)(5), to include a time frame of 30 days for a utility to reimburse the department for measures taken pursuant to a utility's failure to comply with the rules. Another commenter suggested numerous revisions to subsection (a) to ensure the utility is protected from costs being arbitrarily imposed by the department.

Response: Since there are many variables involved with the reimbursement of these types of expenses, it is impractical to address them by rule.

Comment: Several commenters question the department's authority to prescribe vegetation management policy to utilities as stated in §21.38(b). Utilities are required under other federal and state law to maintain vegetation clearing policies unique to their type of utility. These requirements should be deleted in their entirety, or amended so that agreements between a utility and the department would be necessary for enforcement. One commenter requests an amendment making subsection (b) subject to a utility's prior rights.

Response: The department disagrees with this comment. Under federal and state safety restrictions, the department maintains a clear zone around all highways upon which all vegetation that is a hazard to the traveling public is removed. Vegetation that is permitted on the right of way is state property. An occupying utility has no property right or any other authority upon which to base a unilateral removal of this asset. In the event that a utility possesses a superior property right, the utility would be free to address vegetation as it sees fit, subject to the safety requirements of the highway facility and the traveling public. The department seeks to strike a balance between a utility's industry standards and its duty to protect state assets; however, if a conflict exists, the more restrictive policy will prevail.

Comment: Five commenters suggested that §21.38(b)(6), concerning utility reimbursement to the department for damages to roads, drives, terrain, landscaping, or fences, is without due process. They claim that the department could arbitrarily assess such damages to a utility without an opportunity for the utility to repair the damage or without seeking input from the utility.

Response: Since there are many variables involved with the assessment and reimbursement of these types of expenses, it is impractical to address them by rule.

Comment: One commenter suggested including signed and sealed traffic control plans in subsection (c).

Response: Such a requirement would be an unnecessary expense since specific traffic control measures are required under the Texas Manual on Uniform Traffic Control Devices (TMUTCD).

Comment: Four commenters questioned the requirement under §21.38(c)(2)&(3) that traffic control devices conform to the National Cooperative Highway Research Project (NCHRP) Report 350. The commenter believes that compliance with TMUTCD is sufficient.

Response: The NCHRP Report sets crashworthiness standards, whereas the TMUTCD sets the standards for traffic control layouts and the devices to be used. Traffic control devices must conform to both.

Comment: Five commenters noted that under §21.38(d)(1) a utility is responsible for making requests for emergency repairs through the appropriate district office. By definition, appropriate notification cannot be given for "emergency maintenance."

Response: The department, in this subsection, does not require prior notification for emergency maintenance, only that the notice of the maintenance, when made, be directed to the district office. In an emergency maintenance situation notification to the district may sometimes be feasible prior to initiating the maintenance. Typically, however, such notification is practical only after the emergency maintenance is performed.

Comment: A commenter stated that requiring a utility to relocate a facility that is not installed in the location shown on approved construction plans, as mandated by §21.38(d)(2), is too broad. Installation of underground facilities is not an exact science and a utility could be penalized for installation "inches from the design location."

Response: The department recognizes the inexact science of underground utility installation and the existence of industry tolerances for such installations. However, this provision is designed to allow the department to better manage its right of way.

§21.39. Ownership/Abandonment/Idling.

Comment: Multiple comments were received regarding §21.39(a). Subsection (a) does not recognize the right of a utility to receive compensation for those property rights that are acquired by the department; nor does it recognize any right for a utility to be reimbursed for the acquisition of a substitute property interest if desired.

Response: Transportation Code, §203.092, dictates the rights of a utility when it possesses a property interest and is required to relocate its facilities. Since the level of reimbursement is determined on an individual fact basis, subsection (a) is not intended as an exhaustive restatement of current law. It merely acknowledges that the department will acquire the property interest of the utility if the property is located within the new highway right of way. Transportation Code, §203.092, and federal law control the extent of utility reimbursements, including replacement property interests. Reimbursements will be made pursuant to those laws.

Comment: One commenter suggested amending §21.39(b) to require the department to contact the regulatory agency overseeing the utility to determine if ownership of a facility has changed.

Response: The department disagrees with this comment. When facilities are located on department right of way, it is incumbent upon the utility to provide notice of a change in ownership. Should it be necessary for the department to contact a utility for a proposed highway improvement, the department should not be subject to uncertainty as to what entity the utility is operating under. By requiring notification solely to the department, uncertainty is minimized.

Comment: Several comments were received regarding the abandonment of facilities under §§21.39(c)(1)(A),(B)&(C). Two commenters suggested the subsection be deleted in its entirety since either the Railroad Commission of Texas or federal law has jurisdiction over pipeline abandonment. Other commenters objected to the entire provision as being too onerous and burdensome. The overall objection is that, once abandoned, and especially if the utility releases its property interest, the utility should have little or no further responsibility towards the facility. One commenter suggested referencing Chapter 251, Utilities Code, in subsection (c).

Response: To reduce the cost of future improvements to a highway facility, and to ensure the safety of the facility and other utility users, abandoned utility facilities should be removed. In many instances, the removal of the facility is reimbursed by the department. At a utility's request, the department affords discretion to the District Engineer to allow abandoned utilities to remain in place conditioned upon the criteria contained in subsection (c). Since the facility was installed due to the need of the utility, if it wishes to abandon the facility, the department should not bear expenses for the safety, location, or future removal of the facility. The requirements of §21.39(c) do not conflict with other regulatory authorities as the department has the primary duty to ensure the safety of its facilities. The secondary use by utilities of highway right of way does not provide authority to determine what constitutes safe use. Note that the department elects not to reference specific industry regulations in its rules unless necessary; however, such election does not absolve a utility from abiding by those laws.

Comment: A commenter stated that for high and low pressure gas pipeline abandonment under §21.39(c)(1)(C)(4), certification of conformance with all applicable laws should be made to

the regulatory agency having authority over the utility. One commenter stated that clause (iii) of §21.39(c)(1)(A) is overly burdensome because some of the requested information may be unknown by the utility.

Response: Since the pipeline occupies department property, the department has the responsibility to ensure that the gas pipeline has been properly and safely abandoned. It is the department that grants the permission for abandonment in place, and the department must ensure the safety of the highway facility and its users; therefore, notice should properly be sent to the department once complete. The department acknowledges that it cannot reasonably hold a utility responsible for information that the utility does not possess.

Comment: A commenter stated that the requirements under §21.39(c)(4)(B), that an abandoning utility must submit to the department written certification that the abandonment conforms to the most stringent legal or industry standard, is open ended. The utility is unable to determine what is required.

Response: The requirement is that whatever the most stringent abandonment standard to which the utility is subject, whether required legally or by industry standards, is the level of certification adopted by the department. The utility will be required to submit to the department a certification that it has conformed to the most stringent standard.

Comment: Four commenters noted that subsection (c)(6), requiring that records of the abandoned pipeline should be kept in a utility's permanent file, should be deleted in its entirety. Retention of records is regulated by other entities.

Response: Highway improvement is an ongoing process requiring changes subject to the needs of the traveling public. The department is unable to recommend a retention schedule for abandoned utilities since the department cannot determine when in the future the records will be necessary due to an improvement. Permanently retaining the records is the only way to ensure that such information will be available to the department when needed.

Comment: One commenter supports the section and suggested including the requirement of Global Positioning System data for all abandoned utilities.

Response: The department has determined that requiring this data would create an unnecessary expense.

§21.40. Underground Utilities.

Comment: Several commenters stated that §21.40(a)(1)(A), regarding the casing of underground utilities crossing the highway, provides no standard for utilities to demonstrate to the department that their casing is adequate for expected loads and stresses. One commenter stated that using steel casing on steel pipelines is not good engineering practice.

Response: Standards applicable to utilities to demonstrate adequate casing will be set out in the department's policy manual. Installations that exceed the flexibility of the rules may be evaluated through an exception request pursuant to §21.35. A substitute casing would be allowed in the event that a required casing would constitute a poor engineering practice.

Comment: Two commenters noted that §21.40(a)(1)(B) should be amended to allow a utility the discretion to determine whether steel, concrete, or plastic casing is the appropriate material for encasement.

Response: The department disagrees with this comment because the department must determine whether the material is adequate for the expected loads and stresses of the highway facility.

Comment: A commenter suggested that the depth of pipeline cover outlined in §21.40(a)(2)(D) should be increased from its present 6 inches to 12 inches.

Response: The department has determined that 6 inches of cover is sufficient for safety purposes. However, the department encourages utilities to use the industry standard if it will provide greater safety to the facility and the traveling public.

Comment: One commenter was concerned that the restrictions on manholes in the pavement or shoulder of a highway in §21.40(a)(3)(A) might be applied when there is a prior agreement between the department and a utility regarding the installation of these manholes.

Response: The department recognizes the limitations of highway space in some urban areas. Prior agreements between the department and a utility that conflict with these regulations will not be disturbed.

Comment: One commenter wants casing decisions under §21.40(a)(4)(A), regarding the method for placing lines beneath an existing highway, left to the utility. Another commenter claims the term "jacking" is misused, that the department wishes to prohibit the ramming of pipeline under the highway, whereas the term actually means the excavation of soil for that purpose.

Response: The department must determine if casing is needed due to the expected loads and stresses of the highway facility. The department stands by its use of the term "jacking" meaning the forcing of pipeline through loose soils; the commenter may have a different industry definition.

Comment: Four commenters stated §21.40(a)(3)(B) limits the equipment that may be installed in manholes that occupy the right of way. One commenter requests clarification of what equipment is prohibited, and what is the need for the department to restrict that type of equipment.

Response: The department limits the equipment that may be placed in right of way manholes due to safety and maintenance concerns. The equipment listed either poses an unreasonable risk of harm to the facility or the traveling public, or requires an unacceptable level of maintenance. To ensure the safety of the traveling public, the department attempts to maintain a clear right of way. To assist in this endeavor, the department seeks to limit utility equipment requiring maintenance from occupying the right of way, preferring that utilities locate high maintenance facilities on non-departmental property.

Comment: Four commenters requested the department to change the required size of manhole covers contained in §21.40(a)(3)(C). The requested change is from an outside width of 10 feet to 14 feet, and the depth from a minimum of 5 feet to a minimum of 3 feet. Changing the utility's dimensions to fit this subsection will cause the commenter undue hardship and burden.

Response: The department suggests the commenter avail itself of §21.35, and apply for an exception with the district office. If this is the utility's standard historical practice, §21.40(a)(3)(C) is not intended to prohibit utility customary practices that meet district approval.

Comment: Four commenters requested that the department be flexible concerning §21.40(a)(4)(b), which sets out required clearances from lanes of traffic for equipment located within the right of way. The commenter regularly uses different clearances with greater safety measures when needed.

Response: The department suggests the commenter avail itself of §21.35 and apply for an exception with the district office. The subsection is not intended to prohibit utility customary practices that meet district approval.

Comment: A commenter suggested the restrictions for unsuitable pipeline conditions on pipeline crossings contained in §21.40(a)(6) should be relaxed. The "shall" provision should be changed to "should" to allow flexibility. The commenter also requested clarification as to the safe clearances near footings or bridges and retaining walls.

Response: The department disagrees with this comment. The use of the term "generally unsuitable," when referring to the restricted conditions, is intended to provide flexibility on those occasions when the conditions may be appropriate. A utility may apply for an exception under §21.35 if use of one of the conditions is necessary.

Comment: Five commenters noted that the department-required clearances between pipelines and other utilities provided in §21.40(a)(7) should be subject to prior private agreements between pipeline owners and utilities. One commenter requested that the portion of the first sentence allowing districts the discretion to allow greater clearances should be removed.

Response: The department disagrees with this comment. Unless the department is a party to the agreement, the department will not recognize contractual agreements between public utilities concerning department right of way when the safety of the highway facility or traveling public is at issue. With regard to existing utilities, no adjustment will be necessary unless the department determines that there is a significant safety issue, or there is an improvement to the highway facility. A utility may apply for an exception from the district office in accordance with §21.35 if it can show that there is no safety issue due to the method of installation.

Due to the differences in geography between districts, the department allows individual districts to require greater clearances if necessary for the safety of the facility and traveling public. These supplemental requirements can be appealed to the Maintenance Division or Right of Way Division at the discretion of the utility.

Comment: A commenter stated that §21.40(a)(9), regarding the department's requirements for utilities locating in department drainage easements, should be eliminated entirely. The department has no authority outside of its right of way.

Response: The commenter's statement is unsupported in the law. Under Texas law, the owner of an easement has the right of unencumbered use of the property to the extent that such does not violate the terms of the easement. Unencumbered use of a drainage easement owned by the department allows the department to control the method of installation of any utility to ensure that the drainage characteristics of the land are undisturbed.

Comment: Six commenters said that §21.40(a)(10) should be deleted. The subsection requires current longitudinal installations to be relocated at a district's discretion if they are located under a pavement structure or shoulder of a highway.

Response: Section 21.40(a)(10) offers discretion to the district for requiring a relocation in this instance. If the installation does not pose a safety threat to the facility, and does not require routine maintenance that could pose a threat to the traveling public, it is department policy to allow these installations to remain.

Comment: Seven commenters to §21.40(a)(11) stated that requiring pipeline markers showing operating pressure and depth of cover at highway crossings is an undue burden, can lead to reliance upon faulty information, and can be an aid to terrorism.

Response: The department disagrees with this comment. The additional information serves to protect the transportation facility and would allow the department to contact the appropriate personnel in the case of an emergency. Requiring a marker at highway crossings does not remove the responsibility of another utility or the department to contact a pipeline utility when work on the right of way is contemplated.

Comment: A commenter requested that the requirements for outlets for underdrains that are necessary in some underground utilities, as described in §21.40(a)(12), be deleted.

Response: The use of outlets for underdrains provides superior protection of the highway facility. An exception request to the use of outlets may be made under §21.35.

Comment: Four commenters suggested that the term "underdrains" contained in §21.40(a)(13) needs to be defined.

Response: The department disagrees with the comment and feels the context clearly indicates the meaning of the term.

Comment: One commenter requested that the depth of cover for low-pressure gas lines required under §21.40(b)(1)(A)(ii)(I) be changed from "18 inches" to "18 inches or one-half of the diameter of the pipe, whichever is greater," beneath the bottom of the pavement structure. The commenter makes a similar request for subsection (b)(1)(A)(ii)(II) that the depth of cover for paved areas and under ditches remain at 24 inches instead of the proposed 48 inches.

Response: The department disagrees with this comment. The department has determined that the depth of cover provided in the repealed rules is insufficient to provide adequate safety for the highway facility and the traveling public. Should a utility determine that the requirement is unduly burdensome, it may appeal the requirement through the exception process outlined in §21.35.

Comment: One commenter requested the depth of cover in §21.40(b)(1)(B) not be increased to 36 inches and should remain at 24 inches as stated in the current rules.

Response: The department disagrees with this comment. The department has determined that the depth of cover provided in the repealed rules is insufficient to provide adequate safety for the highway facility and traveling public. Should a utility determine that the requirement is unduly burdensome, it may appeal the requirement through the exception process under §21.35.

Comment: A comment was received concerning §21.40(b)(1)(B)(i), which states that low-pressure gas lines crossing the pavement shall be placed in a steel encasement. The commenter noted that this is against good engineering practices. An additional comment is that the title of the subsection refers to longitudinal placement, and the inclusion of crossings is inconsistent with such a placement.

Response: To prevent any confusion, §21.40(b)(1) is adopted with changes by renumbering the clauses from (i) through (iv) to subparagraphs (C)-(F) to be consistent with §21.40(b)(2). Subsection (b)(1)(B)(i) specifically states that in the event a utility must encase a steel pipeline that the district may waive the requirement if the line is of welded steel construction, and cathodic protection or cold tar epoxy wrapping is used.

Comment: Five commenters stated that venting of low-pressure gas lines, as required in §21.40(b)(1)(B)(ii), is not necessary and should be deleted. It was further stated a utility should be able to provide proof to the department that the encasement of a plastic line at a crossing, as required in subsection (b)(1)(B)(iii), is unnecessary for safety purposes. Finally, the commenter wants clarification that markers are an exception to the restriction of above ground appurtenances contained in (b)(1)(B)(iii).

Response: The department disagrees with this comment. The department has determined that venting of low-pressure gas lines is necessary to provide adequate safety for the highway facility and the traveling public. Should a utility determine that this requirement is unduly burdensome, or if it believes that the strength of plastic pipe at a crossing provides adequate safety, it may appeal the requirement through the exception process under §21.35. The department considers its requirements for markers for underground pipelines to be excluded from the language of §21.40(b)(1)(B)(iii). It is again noted that this subsection is adopted with changes to the numbering format.

Comment: A commenter suggested that subsection (b)(1)(D)(iv) of §21.40 should be deleted because the department may not require modifications to a utility facility that was installed in accordance with prior rules. Additionally, it is inappropriate to use steel casing to protect steel lines.

Response: The subsection offers discretion to the district for requiring a relocation in this instance. If the current installation does not pose a safety threat to the facility, and does not require routine maintenance that could pose a threat to the traveling public, it is department policy to allow these installations to remain. The subsection referred to in the comment does not contain reference to steel casing or lines.

Comment: One commenter requested that subsection (b)(2)(C) include concrete protective slabs in addition to encasement as a method of protection for high-pressure lines.

Response: The department disagrees with this comment. The department has determined that encasement is necessary to provide adequate safety for the highway facility and traveling public, and to keep utility incursions into the right of way to a minimum. The inclusion of concrete slabs as a method of protection would preclude the use of the covered right of way by the department or other utilities. Should a utility determine that this requirement is unduly burdensome, it may appeal the requirement through the exception process under §21.35.

Comment: Two commenters stated the requirement that vents for high pressure lines be installed immediately above the pipeline, as required by §21.40(b)(2)(E), is overly burdensome because in some instances such installation would be impractical. Additionally, the restriction of above ground appurtenances contained in subsection (b)(2)(F) precludes the installation of cathodic protection facilities or valve assemblies necessary for the safety of the utility facility.

Response: The department disagrees with this comment. If the vent cannot be placed immediately above the pipeline or if the installation of valve assemblies is necessary to protect the safety of the highway facility or the traveling public, an exception may be applied for with the district under §21.35.

Comment: Four commenters stated that although a utility by rule is allowed to encase electric lines in "comparable materials," other than steel as stated in §21.40(f)(1)(b), in practice the department does not allow alternative encasements. The commenter suggested amending the rule to allow a utility discretion to use materials approved in industry standards.

Response: The department does not agree with the comment. If sufficient proof is provided to the district that the comparable materials are of sufficient strength to provide adequate safety, the district will allow the use of such materials. Such issues should be addressed through the exception procedure outlined in §21.35 to the Maintenance or Right of Way Divisions. Discretion in this area is reserved to the department to ensure safety and uniformity of rule application.

Comment: One commenter stated that §21.40(f)(2)(D)(i), which requires that the owner and the occupier of shared conduit space must submit a joint Utility Installation Request for new line installations, should be deleted. The owner, under federal law, would have no right to require the occupier to submit such a request.

Response: The department has the responsibility to be informed of all installations to be performed on state right of way, as well as all occupiers of that right of way. The department is aware that a conduit owner cannot exclude other telecommunications providers under federal law; however, the installation of a new line in existing conduit is considered a new installation by the department, and thus subject to the notification requirements. The information requested will not be used for any purpose other than as a tool to gather the pertinent facts regarding the installation of the new lines.

§21.41. Overhead Electric and Communication Lines.

Comment: A commenter requested the deletion of subsection (a), regarding methodology of installing overhead electric lines, because the authority for regulation lies with the Public Utility Commission of Texas (PUC).

Response: The department disagrees with this comment as it has authority over the manner in which a utility installs or maintains its facility on department right of way to the extent that there is a potential impact upon the safety of the highway facility or the traveling public.

Comment: Five commenters noted that the restriction in §21.41(d)(1), that the diameter of utility poles may not exceed 36 inches, is overly burdensome and expensive. This restriction will require utilities to install more poles, or in the alternative to install guy wires to support the weight of lines placed on poles. One commenter stated that the department has no authority to regulate the method of installation of utility poles; the authority for regulation lies with the PUC.

Response: The department disagrees with this comment. For the safety of the traveling public, and to conform to its policy of a clear right of way, the department was required to determine at what diameter a utility pole becomes an unacceptable collision hazard. Thirty-six-inch diameter poles were chosen because of their smaller footprint upon the highway facility and their use as an electric industry standard. Larger poles, and their attendant supporting structures, create an unacceptable risk to the traveling public. The department has authority over the manner in which a utility installs or maintains its facility on department right

of way to the extent that there is a potential impact upon the safety of the highway facility or traveling public.

Comment: Concerning §21.41(d)(2) and (3), five commenters stated that the prohibition of electric poles being placed in the center median of a highway or that electric lines not being allowed to cross bridge or grade separation structures, is unreasonable for urban areas. Restricted space in these areas may require such an installation, and the commenter requests the district be given discretion to allow them.

Response: The department agrees with this comment. In the event such an installation is necessary, the utility may avail itself of the exception process outlined in §21.35. For grammatical purposes, the department is adopting §21.41(d)(3) with a change by deleting "at any time" at the end of the second sentence.

Comment: Several commenters requested that §21.41(e) be amended so that industry standards for marking and identifying electric poles can be used. The department's requirements are too burdensome when compared to industry standards.

Response: The department disagrees with the comment. Even though there may be a single set of poles occupying the right of way, there is the likelihood that multiple utilities will be occupiers of the poles. If an adjustment to the poles becomes necessary, the additional marking requirements will allow the department to expeditiously contact the owners and occupying utilities and arrange for the adjustment.

43 TAC §§21.31 - 21.51

STATUTORY AUTHORITY

The repeals are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE: None.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 463-8630

43 TAC §§21.31 - 21.41

The new sections are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE: None.

§21.31. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) AASHTO--American Association of State Highway and Transportation Officials.

(2) Abandoned utility--A utility facility:

(A) that no longer carries a product or performs a function and for which the owner is unknown or cannot be located; or

(B) whose owner has requested abandonment and the abandonment has been approved by the district.

(3) Access denial line--A line concurrent with the common property line across which access to the highway facility from the adjoining property is not permitted.

(4) As-Built plans-- Drawings showing the actual locations of installed or relocated utilities.

(5) Border width--The area between the edge of pavement structure or back of curb to the right of way line.

(6) Bridge abutment joint--The joint between the approach slab and bridge structure.

(7) Center median--The area between opposite directions of travel on a divided highway.

(8) Certified as-installed construction plans--The construction plans for the installation of a utility, accompanied by an affidavit certifying that the facility was installed in accordance with the plans.

(9) Commission--The Texas Transportation Commission.

(10) Common carrier--As defined in the Natural Resources Code, §111.002.

(11) Conduit--A pipe or other opening, buried or above ground, for conveying fluids or gases, or serving as an envelope containing pipelines, cables, or other utilities.

(12) Controlled access highway--A highway so designated by the commission on which owners or occupants of abutting lands and other persons are denied access to or from the highway main lanes.

(13) Department--The Texas Department of Transportation.

(14) Depth of cover--The minimum depth as measured from the top of the utility line to the ground line or top of pavement.

(15) Design vehicle load (HS-20)--A design load designation used for bridge design analysis representing a three-axle truck loaded with four tons on the front axle and 16 tons on each of the other two axles. The HS-20 designation is one of many established by AASHTO for use in the structural design and analysis of bridges.

(16) Distribution line--That part of a utility system connecting a transmission line to a service line.

(17) District--One of the 25 geographical districts into which the department is divided.

(18) District engineer--The chief administrative officer in charge of a district, or his or her designee.

(19) Duct--A pipe or other opening, buried or above ground, containing multiple conduits.

(20) Engineer--A person licensed to practice engineering in the state of Texas.

(21) Executive director--The chief administrative officer of the department.

(22) Freeway--A divided highway with frontage roads or full control of access.

(23) Frontage road--A street or road auxiliary to, and located alongside, a controlled access highway or freeway that separates local traffic from high-speed through traffic and provides service to abutting property.

(24) Gathering line--A line that delivers raw product from various sites to a central distribution or feed line for the purposes of refining, collecting, or storing the product, and is private in function and does not directly or indirectly serve the public.

(25) Hazardous material--Any gas, material, substance, or waste that, because of its quantity, concentration, or physical or chemical characteristics, is deemed by any federal, state, or local authority to pose a present or potential hazard to human health or safety or to the environment. The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table (49 CFR §172.101), and materials that meet the defining criteria for hazard classes and divisions in 49 CFR Part 173 (49 CFR §171.8).

(26) High-pressure gas or liquid petroleum lines--Gas or liquid petroleum pipelines that are operated, or may reasonably be expected to operate in the future, at a pressure of over 60 pounds per square inch.

(27) Horizontal clearance--The areas of highway roadsides designed, constructed, and maintained to increase safety, improve traffic operation, and enhance the appearance of highways.

(28) Idled facility--A utility conduit or line which temporarily does not carry a product, or does not perform a function and whose owner has not provided a date for its return to operation.

(29) Inclement weather--Weather conditions that are hazardous to the safety of the traveling public, highway or utility workers, or the preservation of the highway.

(30) Low-pressure gas or liquid petroleum lines--Gas or liquid petroleum pipelines that are operated at a pressure not exceeding 60 pounds per square inch.

(31) Main lanes--The traveled way of a freeway or controlled access highway that carries through traffic.

(32) Maintenance Division--The administrative office of the department responsible for the maintenance and operation of the state highway system.

(33) Noncontrolled access highway--A highway on which owners or occupants of abutting lands or other persons have direct access to or from the main lanes by department permit.

(34) Outer separation--The area between the main lanes of a highway for through traffic and a frontage road.

(35) Pavement structure--The combination of the surface, base course, and subbase.

(36) Private utility--Any utility facility, its accessories, and appurtenances, including gathering lines devoted exclusively to private use.

(37) Public utility--A person, firm, corporation, river authority, municipality, or other political subdivision engaged in the business of transporting or distributing a utility product for public consumption.

(38) Ramp terminus--The entrance or exit portion of a controlled access highway ramp adjacent to the through traveled lanes.

(39) Right of Way Division (ROW)--The administrative office of the department responsible for the acquisition and management of the state right of way.

(40) Riprap--An appurtenance placed on the exposed surfaces of soils to prevent erosion, including a cast-in-place layer of concrete or stones placed together.

(41) Service line--A utility facility that conveys electricity, gas, water, or telecommunication services from a main or conduit located in the right of way to a meter or other measuring device that services a customer or to the outside wall of a structure, whichever is applicable and nearer the right of way.

(42) TMUTCD--The most recent edition of Texas Manual on Uniform Traffic Control Devices for Streets and Highways.

(43) Transmission line--That part of a utility system connecting a main energy or material source with a distribution system.

(44) Utility--Any entity owning a public or private utility.

(45) Utility appurtenances--Any attachments or integral parts of a utility facility, including fire hydrants, valves, and gas regulators.

(46) Utility facilities--All lines and their appurtenances within the highway right of way except those for highway-oriented needs, including underground, surface, or overhead facilities either singularly or in combination, which may be transmission, distribution, service, or gathering lines.

(47) Utility strip--The area of land established within a control of access highway, located longitudinally within the border width, where an assignment may be designated for a utility delineating the area of use, occupancy, and access.

(48) Utility structure--A pole, bridge, tower, or other aboveground structure on which a conduit, line, pipeline, or other utility is attached.

§21.33. Applicability.

(a) For highways under department jurisdiction, the provisions of this subchapter concerning utility accommodation apply to:

(1) new utility installations;

(2) additions to or maintenance of existing utility installations;

(3) adjustments or relocations of utilities; and

(4) existing utility installations retained within the right of way.

(b) The provisions of this subchapter concerning utility accommodation do not apply to utilities located within the rights of way of completed highways for which agreements with the department were entered into before the effective date of this subchapter.

(c) This subchapter applies to utility lines not specifically mentioned in accordance with the nature of the line. All lines carrying caustic, flammable, or explosive materials shall conform to the provisions for high-pressure gas and liquid fuel lines.

(d) The district engineer or designee may prescribe special district requirements on a specific installation or adjustment based on the specific soil, terrain, climate, vegetation, traffic characteristics, type of utility line, or other factors unique to the area.

§21.37. Design.

(a) General. The design of any utility installation, adjustment, or relocation is the responsibility of the utility. Utility design will be accomplished in a manner and to a standard acceptable to the department. The location and manner in which a utility installation, adjustment, or relocation work will be performed within the right of way must be reviewed and approved by the department. The department will review the measures to be taken to preserve the safety and free flow of traffic, structural integrity of the highway or highway structure, ease of highway maintenance, appearance of the highway, and the integrity of the utility facility. Utility installations shall conform with:

(1) the requirements of this subchapter;

(2) the National Electrical Safety Code rules for the installation and maintenance of electric supply and communication lines;

(3) 23 CFR Part 645B, Accommodation of Utilities;

(4) 49 CFR Part 192, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards;

(5) 49 CFR Part 195, Transportation of Hazardous Liquids by Pipeline;

(6) the latest American Society for Testing and Materials (ASTM) specifications;

(7) the latest edition of the Texas Manual on Uniform Traffic Control Devices;

(8) 30 TAC §§290.38-290.47, relating to Rules and Regulations for Public Water Systems; and

(9) applicable state and federal environmental regulations, including storm water pollution prevention, endangered species, and wetlands.

(b) Location.

(1) Utility lines shall be located to avoid or minimize the need for adjustment for future highway projects and improvements, to allow other utilities equal access in the right of way, and to permit access to utility facilities for their maintenance with minimum interference to highway traffic.

(2) Longitudinal installations, if allowed, shall be located on uniform alignments to the right of way line to provide space for future highway construction and possible future utility installations.

(3) New utility lines crossing the highway shall be installed at approximately 90 degrees to the centerline of the highway.

(4) The horizontal and vertical location of utility lines shall conform with §21.41(c) of this subchapter, consistent with the clearances applicable to all roadside obstacles. No aboveground fixed objects will be allowed in the horizontal clearance.

(5) The utility is responsible for determining whether other utility lines exist at, or if plans have been submitted to the department regarding, the proposed installation area. The utility must make every effort to insure that the proposed installation is compatible with existing and approved future utilities.

(6) Utilities on controlled access highways or freeways shall be located to permit maintenance of the utility by access from frontage roads, nearby or adjacent roads and streets, or trails along or near the right of way line without access from the main lanes or ramps. Utilities shall not be located longitudinally in the center median or outer separation of controlled access highways or freeways.

(7) On highways with frontage roads, longitudinal utility installations may be located between the frontage road and the right of way line. Utility lines shall not be placed or allowed to remain in the center median, outer separation, or beneath any pavement, including shoulders.

(8) When a longitudinal installation is proposed within existing access denial lines of a controlled access highway or freeway without frontage roads and meets the conditions of §21.35 of this subchapter, the department may establish a utility strip, specific to the requesting utility, designating the area of use, occupancy, and access. All existing and proposed fences shall be located at the freeway right of way line. Denial of access regarding property adjoining the right of way line will not be altered.

(c) Plans. Utilities shall be responsible and accountable for protecting the public investment in the highway, inclusive of all its components, and to maintain traffic capacity and safety for each highway user.

(1) All utility installations shall be of durable materials designed for long life expectancy and relatively free from the need for routine servicing or maintenance. In addition to the requirements of this subchapter, any existing utility lines to remain in place must be of satisfactory design and condition in the opinion of the district.

(2) Utilities shall avoid disturbing existing drainage courses. In addition, soil erosion shall be held to a minimum and sediment from the construction site shall be kept away from the highway and drain inlets.

(3) Utility expansions shall be planned to minimize hazards to, and interference with, future highway projects or other utility installations.

(4) Plans shall include the design, proposed location, vertical elevations, and horizontal alignments of the utility facility based on the department's survey datum, the relationship to existing highway facilities and the right of way line, and location of existing utilities that may be affected by the proposed utility facility.

(5) As-built plans or certified as-installed construction plans shall include the installed location, vertical elevations, and horizontal alignments of the utility facility based upon the department's survey datum, the relationship to existing highway facilities and the right of way line, and access procedures for maintenance of the utility facility. As-installed construction plans certified by a utility or its representative shall be submitted to the department for each relocation or new installation. In the alternative, if approved by the director of the Maintenance Division or Right of Way Division, a district may require a utility to deliver either as-installed construction plans that are certified by an independent party or final as-built plans that are signed and sealed by an engineer or registered professional land surveyor. In determining whether to authorize a requirement for independently certified or signed and sealed plans, the director shall consider:

(A) the amount of available right of way or the proposed utility facility's proximity to department facilities and other utility facilities that may be impacted; and

(B) past performance of the utility in providing accurate location data and conformance with its certified as-installed construction plans.

(6) If approved by the director of the Maintenance Division or the Right of Way Division, a district may require a utility to deliver plans that are signed and sealed by an engineer. In determining whether to authorize a requirement for signed and sealed plans, the director shall consider:

(A) the amount of available right of way or the proposed utility facility's proximity to department facilities or other utility facilities that may be impacted;

(B) the complexity of required traffic control plans;

(C) whether the installation or adjustment activity requires a storm water pollution prevention plan; and

(D) the utility's past performance in providing accurate location data and conformance with its construction plans.

(d) Tunnels and bridges.

(1) Interstate highways. In providing a utility tunnel or utility bridge, the requirements in subparagraphs (A) - (I) apply.

(A) Mutually hazardous transmittants, such as fuels and electric energy, shall be isolated by compartmentalizing or by auxiliary encasement of incompatible carriers.

(B) The utility tunnel or utility bridge structure shall conform in design, appearance, location, bury, earthwork, and markings to the culvert and bridge practices of the department.

(C) Where a pipeline on or in a utility structure is encased, the casing shall be effectively opened or vented at each end to prevent possible build up of pressure and to detect leakage of gases or fluids.

(D) Where a casing is not provided for a pipeline on or in a utility structure, additional protective measures shall be taken, such as employing a higher factor of safety in the design, construction, and testing of the pipeline than would be required for cased construction.

(E) Communication and electric power lines shall be insulated, grounded, and carried in protective conduit or pipe from the point of exit from the ground to reentry, and the cable carried to a manhole located beyond the backwall of the structure.

(F) Carrier and casing pipe for gas, liquid petroleum, hazardous product, and water lines shall be insulated from electric power line attachments.

(G) Sectionalized block valves shall be installed in lines at or near ends of utility structures, pursuant to 49 CFR §192.179, Transmission Line Valves, unless segments of the lines can be isolated by other sectionalizing devices within a distance acceptable to the department.

(H) Any maintenance, servicing, or repair of the utility lines will be the responsibility of the utility.

(I) The utility shall notify the district 48 hours in advance of any maintenance, servicing, or repair; however, in an emergency situation, the utility shall notify the district as soon as practicable.

(2) Non-interstate highways. If a utility's line exists on its own easement and it would be more economical to the department to adjust the line across a highway by use of a utility tunnel or bridge rather than to provide separately trenched and cased crossing, consideration should be given to provision of such a structure. Where the utility line was placed through an approved utility installation request and the adjustment of the utility is the sole responsibility of the utility owner, the department may allow for the provision of a utility structure without cost to the department, provided the conditions outlined in subsection (a) of this section and all other pertinent requirements are met. If a structure is to serve as a joint utility/pedestrian crossing or a joint utility/sign support structure, the department will participate to the extent necessary for accommodation of pedestrians or highway signs only.

(e) Joint use of utility and highway structures.

(1) The attachment of utility lines to bridges and grade separation structures is prohibited if other locations are feasible and reasonable.

(2) Where other arrangements for a utility line to span an obstruction are not feasible, the utility may submit a request to the district for attachment of the line to a bridge structure through a bridge attachment agreement. Each attachment will be considered on an individual basis, and permission to attach will not be considered as establishing a precedent for granting of subsequent requests for attachment.

(A) When it is impractical to carry a self-supporting communication line across a stream or other obstruction, the department may permit the attachment of the line to its bridge. If approved on existing bridges, the line must be enclosed in a conduit and so located on the structure as not to interfere with stream flow, traffic, or routine maintenance operations. When a request is made before construction of a bridge, if approved, suitable conduits may be provided in the structure if the utility bears the cost of all additional work and materials involved.

(B) If it is the department's responsibility to provide for the adjustment of telephone lines or telephone conduits to accommodate the construction of a highway and the adjustment provides for the placement of telephone conduits in a bridge, the department will allow a reasonable number of spare telephone conduits in the structure if the spares are placed at the time of construction and the telephone company bears the cost of the spare conduits.

(C) A utility shall not attach gas or liquid fuel lines to a bridge without the written approval of the executive director.

(D) Power lines carrying greater than 600 volts shall not be permitted on bridges.

(E) When a utility is granted permission to attach a pipeline to a proposed bridge prior to construction, any additional costs associated with the design or construction to accommodate the pipeline are the responsibility of the utility.

(F) A utility requesting permission to attach a pipeline to an existing bridge shall submit sufficient information to allow the department to conduct a stress analysis to determine the effect of the added load on the structure. The department may require other details of the proposed attachment as they affect safety and maintenance

(f) Aesthetics. A utility will notify the department before removing, trimming, or replacing trees, bushes, shrubbery, or any other aesthetic features. The department must approve the extent and method of removal, trimming, or replacement of trees, bushes, shrubbery, or any other aesthetic feature.

§21.40. Underground Utilities.

(a) General.

(1) Encasement.

(A) Underground utilities crossing the highway shall be encased in the interest of safety, protection of the utility, protection of the highway, and for access to the utility. Casing shall consist of a pipe or other separate structure around and outside the carrier line. The utility must demonstrate that the casing will be adequate for the expected loads and stresses.

(B) Casing pipe shall be steel, concrete, or plastic pipe as approved by the district, except that if horizontal directional drilling is used to place the casing, high-density polyethylene (HDPE) pipe must be used in place of plastic pipe.

(C) Encasement may be of metallic or non-metallic material. Encasement material shall be designed to support the load of the

highway and superimposed loads thereon, including that of construction machinery. The strength of the encasement material shall equal or exceed structural requirements for drainage culverts and it shall be composed of material of satisfactory durability for conditions to which it may be subjected. The length of any encasement under the roadway shall be provided from top of backslope to top of backslope for cut sections, five feet beyond the toe of slope for fill sections, and five feet beyond the face of the curb for curb sections. These lengths of encasement include areas under center medians and outer separations, unless otherwise specifically addressed in subsections (b)-(f) of this section.

(D) The department will provide an example graphic upon request of a typical section showing encasement lengths

(2) Depth. Where placements at the depths in this section are impractical or where unusual conditions exist, the department may allow installations at a lesser depth, but will require other means of protection, including encasement or the placement of a reinforced concrete slab. Reinforced concrete slabs or caps shall meet the following standards:

(A) width -- five feet, or three times the diameter of the pipe, whichever is greater;

(B) thickness -- six inches, at minimum;

(C) reinforcement -- #4 bars at 12 inch centers each way or equivalent reinforcement; and

(D) cover -- no less than six inches of sand or equivalent cushion between the bottom of the slab/cap and the top of the pipe.

(3) Manholes and handholds.

(A) Manholes shall not be installed unless necessary for installation and maintenance of underground lines. In no case shall a manhole be placed or permitted to remain in the pavement or shoulder of a highway. However, on noncontrolled access highways in urban areas, the district may, in its discretion, allow existing lines to remain in place under existing or proposed highways. In these cases, manholes may remain in place or be installed under traffic lanes of low volume highways in municipalities only if measures are taken to minimize the installations and to avoid locating them at intersections or in wheel paths.

(B) To conserve space, a manhole's dimensions shall be the minimum acceptable by appropriate engineering and safety standards. The only equipment that may be installed in manholes located on the right of way is that essential to the normal flow of the utility, such as circuit reclosers, cable splices, relays, valves, and regulators. Other equipment, such as substation equipment, large transformers, and pumps, shall be located outside the right of way.

(C) Inline manholes are the only type permitted within the right of way. The width dimensions shall be no larger than necessary to hold equipment involved and to meet safety standards for maintenance personnel. Outside width, the dimension of the manhole perpendicular to the highway, shall not exceed ten feet, with the length to be held to a reasonable minimum. The outside diameter of the manhole chimney at the ground level shall not exceed 36 inches, except that if the utility demonstrates necessity, the district may, at its discretion, allow an outside diameter of up to 50 inches. The top of the roof of the manhole shall be five feet or more below ground level.

(D) All manhole covers shall be installed flush with the ground or pavement structure. In order to minimize vandalism, manhole covers must weigh at least 175 pounds. Manhole rings and covers must be designed for HS-20 loading.

(E) Manholes shall be straight, inline installations with a minimum overall width necessary to operate and maintain the enclosed equipment. The utility is responsible for any adjustment of the manhole rim that may be needed to meet grade changes.

(4) Installation.

(A) Lines placed beneath any existing highway shall be installed by boring or tunneling. Jacking may not be used unless approved in writing by the district. The district may require encasement of lines installed by boring or jacking. The use of explosives is prohibited. Pipe bursting or fluid/mist jetting may be allowed at the discretion of the department.

(B) For rural, uncurbed highway crossings, all borings shall extend beneath all travel lanes. Unless precluded by right of way limitations, the following clearances are required for rural highway crossings:

(i) 30 feet from all freeway main lanes and other high-speed (exceeding 40 mph) highways except as indicated in clauses (ii)-(iv) of this subparagraph;

(ii) 16 feet for high-speed highways with current average daily traffic volumes of 750 vehicles per day or fewer;

(iii) 16 feet for ramps; or

(iv) ten feet for low-speed (40 mph or less) highways.

(C) Annular voids greater than one inch between the bore hole and carrier line (or casing, if used) shall be filled with a slurry grout or other flowable fill acceptable to the department to prevent settlement of any part of the highway facility over the line or casing.

(D) For curbed highway crossings, all borings shall extend beneath travel and parking lanes and extend beyond the back of curb, plus:

(i) 30 feet from facilities with speed limits of 40 mph or greater; or

(ii) five feet from facilities with speed limits of less than 40 mph or less, plus any additional width necessary to clear an existing sidewalk.

(E) Where circumstances necessitate the excavation of a bore pit or the presence of directional boring equipment closer to the edge of pavement than set forth in paragraphs (2) or (3) of this subsection, approved protective devices shall be installed for protection of the traveling public in accordance with §21.38 of this subchapter. Bore pits shall be located and constructed in such a manner as not to interfere with the highway structure or traffic operations. If necessary, shoring shall be utilized for the protection of the highway, and must be approved by the district.

(F) All traffic control devices, including signs, markings, or barricades used to warn motorists and pedestrians of the construction activity must conform to the TMUTCD.

(G) When trenching longitudinally, backfill or stabilized sand shall be compacted to densities equal to that of the surrounding soil.

(5) Nonmetallic pipe detection. Where nonmetallic pipe is installed, whether longitudinally or at a crossing, a durable metal wire or other district-approved means of detection shall be concurrently installed.

(6) Unsuitable conditions. The following conditions are generally unsuitable or undesirable for pipeline crossings and shall be avoided:

(A) deep cuts;

(B) locations near footings or bridges and retaining walls;

(C) crossing intersections at-grade or ramp terminals;

(D) locations at cross-drains where the flow of water may be obstructed;

(E) locations within basins or underpasses drained by pump if the pipeline carries a liquid or liquefied gas; or

(F) terrain where minimum depth of cover would be difficult to attain.

(7) Clearances. Except as specified in this subchapter, there shall be a minimum of 12 inches vertical and horizontal clearance between a pipeline and an existing utility, unless a greater clearance is required by the district. However, if an installation of another utility or highway feature cannot take place without disturbing an existing utility, the minimum clearance will be 24 inches.

(8) Crossings. A district may require crossings with no longitudinal connections to be encased within the right of way.

(9) Drainage easements. Where it is necessary for pipelines to cross department drainage easements outside of the right of way, the depth of cover shall be as specified for each type of utility. In cases where soil conditions are such that erosion might occur, or where it is not feasible to obtain specified depth, it shall be the responsibility of the utility to install retards, energy dissipators, encasement, or concrete or equivalent slabs/caps over the pipe, as approved by the department. Where grades on the pipelines must be maintained, such as gravity flow sewer lines, each case will be reviewed on an individual basis, keeping in mind that the main purpose of the channel is to carry drainage water and that this flow must not be obstructed. The utility owner is responsible for obtaining any other approvals to occupy the drainage easement.

(10) Existing installations in a highway or transportation project. At the district's discretion, existing longitudinal lines in a highway or transportation project that otherwise meet the requirements of this subchapter may remain in place if the lines:

(A) can be maintained in accordance with §21.37(b)(2) of this subchapter; and

(B) are not located under the pavement structure or shoulder of any proposed or existing highway.

(11) Markers. If a high pressure gas or liquid petroleum line crosses a highway, the utility shall place a readily identifiable, durable, and weatherproof marker over the centerline of the pipe at each right of way line. Readily identifiable, durable, and weatherproof markers shall be placed at a minimum distance of 500 feet or line of sight at the right of way line for pipelines installed longitudinally within the right of way. All markers shall indicate the name, address, emergency telephone number of the owner/operator, and offset from the right of way line. For gas or petroleum pipelines, the pipeline product, operating pressure, and depth of pipe below grade shall also be indicated on the markers. At locations where underground utilities have been allowed to cross at an angle other than 90 degrees to centerline, the district may require additional markers in the medians and outer separations of the highway.

(12) Backfilling. Underground utility installations shall be backfilled with pervious material and outlets for underdrainage.

(13) Underdrainage. Underdrains shall be provided where necessary. No puddling beneath the highway will be permitted.

(b) Gas and liquid petroleum lines.

(1) Low-pressure lines.

(A) Depth of cover for crossings. Depth of cover is the depth to the top of the carrier pipe or casing, as applicable. Where materials and other conditions justify, such as on existing lines remaining in place, the district may require a minimum depth of cover under the pavement structure of 12 inches or one-half the diameter of the pipe, whichever is greater.

(i) For encased low-pressure gas lines, the minimum depth of cover shall be:

(I) 18 inches or one-half the diameter of the pipe, whichever is greater, under pavement structure;

(II) 24 inches outside pavement structure and under ditches (original unsilted flowline); or

(III) 30 inches for unencased sections of encased lines outside of pavement structure.

(ii) For unencased low-pressure gas lines, the minimum depth of cover shall be:

(I) 60 inches under the pavement surface or 18 inches under the pavement structure for paved areas;

(II) 48 inches outside paved areas and under ditches (original unsilted flowline); or

(III) a lesser depth if authorized by the district where a reinforced concrete slab is used to protect the pipeline.

(B) Depth of cover for longitudinal placement. The minimum depth of cover for longitudinal installations shall be 36 inches.

(C) Encasement. Low-pressure gas lines crossing the pavement shall be placed in a steel encasement. The district may waive this encasement requirement if the line is of welded steel construction and is protected from corrosion by cathodic protective measures or cold tar epoxy wrapping, and the utility signs a written agreement that the pavement will not be cut for pipeline repairs at any time in the future.

(D) Vents. One or more vents shall be provided for each casing or series of casings. For casings longer than 150 feet, vents shall be provided at both ends. On shorter casings, a vent shall be located at the high end with a marker placed at the low end. Vents shall be placed at the right of way line immediately above the pipeline, situated so as not to interfere with highway maintenance or be concealed by vegetation, and shall be no greater than six inches in diameter. The owner's name, address, and emergency telephone number shall be shown on each vent.

(E) Plastic lines. Plastic lines shall be encased within the right of way on crossings, and must have at least 30 inches of cover.

(F) Aboveground appurtenances. Except for vents, no above ground utility appurtenances for gas lines shall be permitted within the right of way.

(2) High-pressure lines.

(A) Depth of cover for crossings.

(i) Depth of cover is the depth to the top of the carrier pipe or casing, as applicable. Where materials and other conditions justify, such as on existing lines remaining in place, the district may approve a minimum depth of cover under the pavement structure of 12 inches or one-half the diameter of the pipe, whichever is greater. For encased high-pressure gas or liquid petroleum lines, the minimum depth of cover shall be:

(I) the greater of 18 inches or one-half the diameter of the pipe, under pavement structures;

(II) 30 inches if the line is outside the pavement structure or under a ditch; or

(III) 36 inches for unencased sections of encased lines outside the pavement structure.

(ii) Where a reinforced concrete slab is used to protect the pipeline, the district may authorize a reduction in the depths specified in this section. For unencased high-pressure gas or liquid petroleum lines, the minimum depth of cover is as follows:

(I) 60 inches under the pavement surface or 18 inches under the pavement structure in paved areas; or

(II) 48 inches if the line is placed outside the pavement structure or under a ditch.

(B) Depth of cover for longitudinal placement. The minimum depth of cover shall be 48 inches.

(C) Encasement. Casing shall consist of a vented steel pipe.

(D) Unencasement.

(i) Where encasement is not employed, the utility shall show that the welded steel carrier pipe will provide sufficient strength to withstand the internal design pressure and the dead and live loads of the pavement structure and traffic. Additional protective measures must include:

(I) heavier wall thickness, higher factor of safety in design, or both;

(II) adequate coating and wrapping;

(III) cathodic protection; and

(IV) the use of Barlow's formula regarding maximum allowable operating pressure and wall thickness, as specified in 49 CFR §192.105.

(ii) Shallow anode bed types exceeding 48 inches in width shall not be permitted in the right of way. All others must have a depth of coverage of at least 36 inches. Deep well anode beds of up to 60 inches in diameter are acceptable. Rectifier and meter loop poles shall be placed at or near the right of way line.

(iii) The minimum length of the additional protection shall be the same as that required for an encased crossing.

(iv) The district may allow existing lines under low-volume highways to remain in place without encasement or extension of encasement if they are protected by a reinforced concrete slab or equivalent protection or if they are located at a depth of five feet under the pavement structure and not less than four feet under a highway ditch.

(E) Vents. Vents shall be installed at both ends of a casing, regardless of length, with a marker on at least one end. Vents shall be placed at the right of way line immediately above the pipeline, situated so as not to interfere with highway maintenance or be concealed by vegetation. The owner's name, address, and emergency telephone number shall be shown on each vent marker.

(F) Aboveground appurtenances. Aboveground appurtenances, except vents for gas lines, shall not be permitted within the right of way.

(c) Water lines.

(1) Material type. All material types used for water lines shall conform to American Waterworks Association, applicable local requirements, and 30 TAC §290.44(a).

(2) Depth of cover. The minimum depth of cover shall be 30 inches, but not less than 18 inches below the pavement structure for crossings.

(3) Encasement. Unless another type of encasement is approved by the district, water lines crossing under paved highways must be placed in a steel encasement pipe within the limits of the right of way. At the district's discretion, encasement may be omitted under center medians and outer separations that are more than 76 feet wide. At the district's discretion, encasement under side road entrances may be omitted in consideration of traffic volume, condition of highway, maintenance responsibility, or district practice. Existing water lines 24 inches or greater may be allowed to remain unencased under the pavement of new low volume highways, provided depth and all other requirements of 30 TAC §290.44 are met.

(4) Manholes. The width dimensions shall be no larger than is necessary to hold equipment involved and to meet safety standards for maintenance personnel. The maximum inside diameter of the manhole chimney shall not exceed 48 inches. The outside diameter of the manhole chimney at the ground level shall not exceed 36 inches.

(5) Aboveground appurtenances.

(A) Fire hydrants and valves. When feasible, fire hydrants and blow-off valves are to be located at the right of way line. Fire hydrants shall not be placed in the sidewalk or any closer than five feet from the back of the curb. Valve locations shall be placed so as not to interfere with maintenance of the highway.

(B) Water meters. Individual service meters shall be placed outside the limits of the right of way. Master meters for a point of service connection may be placed in a manhole with a maximum width of 48 inch inside diameter. If additional volume is required, a manhole with a neck of 60-inch depth must be used.

(C) Service lines crossing highway by bore. Lines for customer service that cross the highway may be placed in a high-density polyethylene (HDPE) encasement pipe without joints (rolled pipe).

(d) Nonpotable water control facilities.

(1) Applicability. This subsection applies to agricultural irrigation facilities, water control improvement districts, municipal utility districts, flood control districts, canals, and similar nonpotable water control facilities.

(2) Depth of cover for buried pipe facilities. The minimum depth of cover, regardless of type of pipe used, shall be 30 inches, but not less than 18 inches below any pavement structure.

(3) Encasement for buried pipe facilities. Unless the district approves another type of encasement, all non-potable water control lines crossing under paved highways within the right of way must be placed in a steel encasement pipe. At the district's discretion, encasement may be omitted under center medians and outer separations that are more than 76 feet wide.

(4) Location and design requirements. Open ditch facilities and buried pipe facilities designed and constructed in accordance with this subchapter may be installed across the right of way. Longitudinal buried pipe facilities installed within the right of way must conform with §21.41(c) of this subchapter, consistent with the clearances applicable to all roadside obstacles. Open ditch facilities shall not be installed longitudinally within the right of way, nor will any aboveground appurtenances be permitted within the horizontal clearance.

(5) Levee/ditch travel road location. Coordination with and approval by the district is required where levee/ditch travel roads intersect the highway.

(e) Sanitary sewer lines.

(1) Material type. All material types used for sanitary sewer lines shall conform to 30 TAC §317.2 and applicable local requirements.

(2) Depth of cover. The minimum depth of cover shall be 30 inches, but not less than 18 inches below any pavement structure.

(3) Encasement. Pressurized line crossings under paved highways within the limits of the right of way shall be placed in a steel encasement pipe. Gravity flow lines not conforming to the minimum depth of cover shall be encased in steel or concrete. At the district's discretion, encasement may be omitted under center medians and outer separations that are more than 76 feet wide.

(4) Manholes. Manholes serving sewer lines up to 12 inches shall have a maximum inside diameter of 48 inches. For lines larger than 12 inches, the manhole inside diameter may be increased an equal amount, up to a maximum diameter of 60 inches. Manholes for large interceptor sewers shall be designed to keep the overall dimensions to a minimum. The outside diameter of the manhole chimney at the ground level shall not exceed 36 inches.

(5) Lift stations. Lift stations and pump stations for sanitary sewer lines exceeding 48 inches inside diameter shall be located outside the limits of right of way.

(f) Electric and communication Lines.

(1) Underground electric lines.

(A) Depth of cover. All underground electric lines placed within the right of way may be installed by direct bury at depths according to the voltage of electric lines as required by the National Electrical Safety Code and as shown in the following chart.
Figure: 43 TAC §21.40(f)(1)(A)

(B) Encasement. Electric lines crossing the roadway shall be encased in steel or comparable material greater than or equal to that of ductile iron, with satisfactory joints, or materials and designs that will provide equal or better protection of the integrity of the highway system and resistance to damage from corrosive elements to which they may be exposed. The lines shall be buried a minimum of 36 inches under highway ditches, and 60 inches below the pavement structure. Encasement shall be provided as outlined in this section.

(C) Installation. Longitudinal underground electric lines may be placed by plowing or open trench method. All plowing and trenching shall be performed in a uniform alignment with the right of way. If the installation of the facility is found to deviate from the approved location, the district, at its sole discretion, may require the adjustment of the facility to the approved location. The utility facility shall be located as set forth in §21.37(b) of this subchapter.

(D) Aboveground appurtenances.

(i) Aboveground appurtenances installed as part of an underground electric line shall be located at or near the right of way line, and shall not impede highway maintenance or operations.

(ii) Structures that are larger in plan view than single poles may be placed on the right of way if:

(I) the installation will not hinder highway maintenance operations;

(II) the housing will be placed at or near the right of way line;

(III) the installation will not reduce visibility and sight distance of the traveling public;

(IV) the dimensions of the housing are minimized, particularly where the need to allow space for highway improvement or accommodation of other utility lines is apparent;

(V) the outside width, length (longitudinal with respect to the right of way), and height dimensions of the aboveground portion of the housing do not exceed 36 inches, 60 inches, and 54 inches respectively;

(VI) the supporting slab does not project more than three inches above the ground line, nor extend more than 12 inches on either side of the housing structure; and

(VII) the installation will be compatible with adjacent land uses.

(E) Manholes. Manholes serving electric and communication lines shall conform to the requirements of this section.

(F) Abandonment. Underground electric lines may be abandoned in place at the discretion of the district.

(2) Underground communication lines.

(A) Longitudinal. The minimum depth of cover for cable television and copper cable communications lines shall be 24 inches. The minimum depth of cover for fiber optic facilities shall be 42 inches. If the owner/operator of a fiber optic facility waives damages and fully indemnifies the department in a form acceptable to the department, the minimum depth of cover may be reduced to not less than 36 inches.

(B) Crossings.

(i) The minimum depth of cover for cable television and copper cable communication lines shall be 24 inches under ditches or 18 inches beneath the bottom of the pavement structure, whichever is greater.

(ii) The top of the fiber optic facility shall be placed a minimum of 42 inches below the ditch grade or 18 inches below the pavement structure or 60 inches below the top of the pavement surface, whichever is greater. The department may authorize a minimum depth of cover of not less than 36 inches below the ditch grade or 60 inches below the top of the pavement surface, whichever is greater, if the owner/operator waives damages and fully indemnifies the department in a form acceptable to the department.

(iii) The department may require encasement or other suitable protection when necessary to protect the highway facility when the line is located:

(I) at less than minimum depth;

(II) near the footing of a bridge or other highway structure; or

(III) near another hazardous location.

(iv) Unless the line is encased, installation shall be accomplished by boring a hole the same diameter as the line. The annular void between a drilled hole and the line or casing shall be filled with a material approved by the district to prevent settlement of any part of the highway facility over the line or casing.

(C) Installation. Lines may be placed by plowing or open trench method and shall be located on uniform alignment with the right of way and as near as practical to the right of way line to provide space for possible future highway construction and for possible future utility installations.

(D) Multiple conduits.

(i) Shared conduits. When an existing utility rents, leases, or sells conduit usage to another utility, the new utility and the conduit owner must submit a joint Utility Installation Request before placement of a new line within the conduit.

(ii) Additional conduits. No more than two additional empty conduits may be added for every full conduit line, unless otherwise approved by the district.

(E) Aboveground appurtenances.

(i) Aboveground pedestals or other utility appurtenances installed as a part of an underground communication line shall be located at or near the right of way line, so as not to impede highway maintenance or operations.

(ii) Large equipment housings. Structures that are larger in plan view than single poles may be placed on the right of way if:

(I) the installation will not hinder highway maintenance operations;

(II) the housing will be placed at or near the right of way line;

(III) the installation will not reduce visibility and sight distance of the traveling public;

(IV) the dimensions of the housing are minimized, particularly where the need to allow space for highway improvement and accommodation of other utility lines is apparent;

(V) outside width, length (longitudinal), and height dimensions of the aboveground portion of the housing do not exceed 36 inches, 60 inches, and 54 inches respectively;

(VI) the supporting slab does not project further than three inches above ground line, nor extend further than 12 inches on either side of the housing structure; and

(VII) the installation will be compatible with adjacent land uses.

(F) Abandonment. Underground communication lines may be abandoned in place at the discretion of the district.

§21.41. Overhead Electric and Communication Lines.

(a) Type of construction. Longitudinal lines on the right of way shall be limited to single pole construction. Where an existing or proposed utility is supported by "H" frames, the same type structures may be utilized for the crossing provided all other requirements of this subchapter are met.

(b) Vertical clearance. The minimum vertical clearance above the highway shall be 22 feet for electric lines, and 18 feet for communication and cable television lines. These clearances may be greater, as required by the National Electric Safety Code and governing laws.

(c) Horizontal clearances. The following table indicates the design values for horizontal clearances:
Figure: 43 TAC §21.41(c)

(d) Location.

(1) Poles supporting longitudinal lines shall be located within three feet of the right of way line, except that, at the option of the department, this distance may be varied at short breaks in the right of way line. Poles with bases greater than 36 inches in diameter shall not be placed within the right of way. Guy wires placed within the right of way shall be held to a minimum and be in line with the pole line. Other locations may be allowed, but in no case shall the guy wires or poles be located closer than the minimum allowed by the department's horizontal clearance policy, as shown in subsection (c) of this section.

(2) Poles shall not be placed in the center median of any highway. At the department's discretion, poles may be placed in the outer separations or more than three feet inside the right of way where the right of way is greater than 300 feet and where poles can be located in accordance with the department's horizontal clearance policy, as shown in subsection (c) of this section.

(3) Overhead electric, communication, and cable television line crossings at bridges or grade separation structures are prohibited. Overhead lines shall not be located below any bridge structure. If rerouting the line completely around the structure and approaches is not feasible, a minimum horizontal distance of 150 feet from the bridge abutment joint and a minimum vertical clearance of 30 feet above the point of crossing the bridge pavement and retaining walls is required to ensure adequate safety for construction and maintenance operations.

(e) Markers. Utility poles must bear readily identifiable plaques or other approved markers denoting ownership and use, at a distance of approximately one pole per 1,320 feet, as equally spaced as practicable, and at every crossing, in a format acceptable to the department. Each company connecting to a pole shall appropriately identify its use of the pole. There shall be a beginning and end marker for each user of the pole line.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 25, 2005.

TRD-200500871
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Effective date: March 17, 2005
Proposal publication date: November 12, 2004
For further information, please call: (512) 463-8630

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Animal Health Commission

Title 4, Part 2

The Texas Animal Health Commission (commission), will review and consider for readoption, revision, or repeal Chapter 43, concerning "Tuberculosis," in accordance with the Texas Government Code, §2001.039. The rules to be reviewed are found in Chapter 43, which is located in Title 4, Part 2, of the Texas Administrative Code and contain the following subchapters and sections:

Subchapter A, entitled "Cattle": §43.1, Cattle (All Dairy and Beef Animals, genus Bos), and Bison (genus Bison); §43.2, Interstate Movement Requirements; and §43.3, Slaughter Plant Collection;

Subchapter B, entitled "Goats": §43.10, Definitions; §43.11, Accredited Herd Plan for Goats; and §43.12, Requirements for Entry into Texas;

Subchapter C, entitled "Eradication of Tuberculosis in Cervidae": §43.20, Definitions; §43.21, General Requirements; §43.22, Herd Status Plans for Cervidae; and §43.23, Requirements for Entry into Texas;

Subchapter D, entitled "Movement Restriction Zone" (MRZ): §43.30, Special Requirements for Movement Restriction Zone (MRZ); and §43.31, Testing Requirements in Movement Restriction Zone (MRZ).

The commission finds reason for the rules to continue to exist but will consider comments related to whether reasons for readoption of these rules continue to exist, whether amendments or changes are needed, or whether repeal of the chapter is appropriate. Any changes to the rules will be proposed by the commission after reviewing the rules and considering the comments received in response to this notice. Any proposed rule changes will then appear in the "Proposed Rules" section of the *Texas Register* and will be adopted in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001.

The comment period will last for 30 days beginning with the publication of this notice of intention to review. Comments or questions regarding this notice of intention to review may be submitted in writing, within 30 days following the publication of this notice in the *Texas Register*, to Delores Holubec, P.O. Box 12966, Austin, Texas 78711-2966. They may also be sent by facsimile to (512) 719-0721 or by e-mail to comments@tahc.state.tx.us. Comments will be reviewed and discussed in a future commission meeting.

TRD-200500886
Gene Snelson
General Counsel
Texas Animal Health Commission
Filed: February 28, 2005

The Texas Animal Health Commission (commission), will review and consider for readoption, revision, or repeal Chapter 55, concerning "Swine," in accordance with the Texas Government Code, §2001.039. The rules to be reviewed are found in Chapter 55, which is located in Title 4, Part 2, of the Texas Administrative Code and contain the following sections: §55.1, Testing Breeding Swine Prior to Sale or Change of Ownership; §55.2, Prohibition on the Use of Modified Live Virus Hog Cholera Vaccine; §55.3, Feeding of Garbage; §55.4, Livestock Markets Handling Swine; §55.5, Pseudorabies; §55.6, Entry Requirements; §55.7, Slaughter Plant Requirements; §55.8, Dealer Recordkeeping; and §55.9, Feral Swine.

The commission finds reason for the rules to continue to exist but will consider comments related to whether reasons for readoption of these rules continue to exist, whether amendments or changes are needed, or whether repeal of the chapter is appropriate. Any changes to the rules will be proposed by the commission after reviewing the rules and considering the comments received in response to this notice. Any proposed rule changes will then appear in the "Proposed Rules" section of the *Texas Register* and will be adopted in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001.

The comment period will last for 30 days beginning with the publication of this notice of intention to review. Comments or questions regarding this notice of intention to review may be submitted in writing, within 30 days following the publication of this notice in the *Texas Register*, to Delores Holubec, P.O. Box 12966, Austin, Texas 78711-2966. They may also be sent by facsimile to (512) 719-0721 or by e-mail to comments@tahc.state.tx.us. Comments will be reviewed and discussed in a future commission meeting.

TRD-200500887
Gene Snelson
General Counsel
Texas Animal Health Commission
Filed: February 28, 2005

General Land Office

Title 31, Part 1

In accordance with §2001.039 Government Code, the Texas General Land Office (GLO) submits the following Notice of Intent to Review the rules found in 31 TAC, Part 1, Chapter 17 relating to Hearing Procedures for Administrative Penalties and Removal of Unauthorized or Dangerous Structures On State Land, §§17.1 - 17.50. This review of Chapter 17 is filed in accordance with the General Land Office's Rule Review Plan published in the October 15, 2004, issue of the *Texas Register* (29 TexReg 9697).

Review of the rules under this chapter will determine whether the reasons for adoption of the rules continue to exist. This Notice of Intent to Review of 31 TAC, Part 1, Chapter 17: Hearing Procedures for Administrative Penalties and Removal of Unauthorized or Dangerous Structures On State Land, applies to the chapter in its entirety.

The GLO invites suggestions from the public during the review process and will address any comments received. Any questions or comments should be directed to Walter Talley, *Texas Register* Liason, General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 463-6311 or email to walter.talley@glo.state.tx.us. Written comments must be received no later than thirty (30) days from the date of publication of this notice.

TRD-200500849

Trace Finley

Policy Director

General Land Office

Filed: February 24, 2005

School Land Board

Title 31, Part 4

In accordance with Section 2001.039 Government Code, the School Land Board (SLB) submits the following Notice of Intent to Review the rules found in 31 TAC Part 4, Chapter 151 relating to Operations Of The School Land Board. Review of the rules under this chapter will determine whether the reasons for adoption of the rules continue to exist. During the review process, the Board may also determine that a specific rule may need to be amended to further refine the directives and goals of the Board, that no changes to a rule as currently in effect are necessary or that a rule is no longer valid or applicable. Rules may also be combined or reduced for simplification and clarity when feasible. Readopted rules will be noted in the Texas Register's Rules Review section without publication of the text. Any proposed amendments or repeal of a rule or chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment prior to final adoption or repeal.

The proposed review of Chapter 151 is filed in accordance with the General Land Office's Rule Review Plan published in the October 15, 2004, issue of the *Texas Register* (29 TexReg 9697).

The SLB invites suggestions from the public during the review process and will address any comments received. Any questions or comments should be directed to Walter Talley, *Texas Register* Liaison, Texas General Land Office, P.O. Box 12873, Austin, TX 78711, facsimile number (512) 463-6311 or email to walter.talley@glo.state.tx.us. Written comments must be received no later than thirty (30) days from the date of publication of this notice.

TRD-200500853

Larry L. Laine

Chief Clerk, Deputy Land Commissioner

School Land Board

Filed: February 24, 2005

In accordance with Section 2001.039 Government Code, the School Land Board (SLB) submits the following Notice of Intent to Review the rules found in 31 TAC Part 4, Chapter 154 relating to Land Sales, Acquisitions, And Trades. Review of the rules under this chapter will determine whether the reasons for adoption of the rules continue to exist. During the review process, the Board may also determine that a specific rule may need to be amended to further refine the directives and goals of the Board, that no changes to a rule as currently in effect are necessary or that a rule is no longer valid or applicable. Rules may also be combined or reduced for simplification and clarity when feasible. Readopted rules will be noted in the Texas Register's Rules Review section without publication of the text. Any proposed amendments or repeal of a rule or chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment prior to final adoption or repeal.

The proposed review of Chapter 154 is filed in accordance with the General Land Office's Rule Review Plan published in the October 15, 2004, issue of the *Texas Register* (29 TexReg 9697).

The SLB invites suggestions from the public during the review process and will address any comments received. Any questions or comments should be directed to Walter Talley, *Texas Register* Liaison, Texas General Land Office, P.O. Box 12873, Austin, TX 78711, facsimile number (512) 463-6311 or email to walter.talley@glo.state.tx.us. Written comments must be received no later than thirty (30) days from the date of publication of this notice.

TRD-200500854

Larry L. Laine

Chief Clerk, Deputy Land Commissioner

School Land Board

Filed: February 24, 2005

Adopted Rule Reviews

Texas Animal Health Commission

Title 4, Part 2

The Texas Animal Health Commission (commission), adopts the review of Chapter 36, concerning "Exotic Livestock and Fowl", in accordance with the Texas Government Code, §2001.039.

The rules reviewed are found in Chapter 36, which is located in Title 4, Part 2, of the Texas Administrative Code and contain the following sections: §36.1, Definitions; and §36.2, General.

The rule review was published for comment in the September 3, 2004, issue of the *Texas Register* (29 TexReg 8625). The commission did not receive any comments. The commission finds reason for the rules to continue to exist and readopts these sections pursuant to the requirements of §2001.039 of the Texas Government Code.

This concludes the rule review of Chapter 36, Exotic Livestock and Fowl.

TRD-200500953

Gene Snelson

General Counsel

Texas Animal Health Commission

Filed: March 2, 2005

Texas Animal Health Commission (commission), adopts the review of Chapter 40, concerning "Chronic Wasting Disease", in accordance with the Texas Government Code, §2001.039.

The rules reviewed are found in Chapter 40, which is located in Title 4, Part 2, of the Texas Administrative Code and contain the following sections: §40.1, Definitions; §40.2, General Requirements; §40.3, Herd Status Plans for Cervidae; and §40.4, Entry Requirements.

The rule review was published for comment in the September 3, 2004, issue of the *Texas Register* (29 TexReg 8625). The commission did not receive any comments. The commission finds reason for the rules to continue to exist and readopts these sections pursuant to the requirements of §2001.039 of the Texas Government Code.

This concludes the rule review of Chapter 40, Chronic Wasting Disease.

TRD-200500954
Gene Snelson
General Counsel
Texas Animal Health Commission
Filed: March 2, 2005

The Texas Animal Health Commission (commission), adopts the review of Chapter 45, concerning "Reportable Disease", in accordance with the Texas Government Code, §2001.039.

The rules reviewed are found in Chapter 45, which is located in Title 4, Part 2, of the Texas Administrative Code and contain the following sections: §45.1, Definitions; and §45.2, Duty to Report.

The rule review was published for comment in the September 3, 2004, issue of the *Texas Register* (29 TexReg 8625). The commission did not receive any comments. The commission finds reason for the rules to continue to exist and readopts these sections pursuant to the requirements of §2001.039 of the Texas Government Code.

This concludes the rule review of Chapter 45, Reportable Disease.

TRD-200500955
Gene Snelson
General Counsel
Texas Animal Health Commission
Filed: March 2, 2005

General Land Office

Title 31, Part 1

The General Land Office (GLO) files this Notice of Readoption of rule 31 TAC, Chapter 7, relating to Surveying, §§7.1 - 7.8. This readoption of Chapter 7 is filed in accordance with the General Land Office's Intention to Review published in the December 24, 2004 issue of the *Texas Register* (29 TexReg 11989).

The GLO has assessed whether the reasons for readopting 31 TAC, Chapter 7, §§7.1 - 7.8 continue to exist. The GLO finds that the rules in Chapter 7 reflect current procedures of the GLO. The reasons for initially adopting the rules continue to exist. The GLO, therefore, readopts Chapter 7 in its entirety, relating to Surveying.

No comments were received on the proposed notice of intention to review.

Chapter 7 was adopted under authority granted to the commissioner of the GLO in §31.051, Texas Natural Resources Code, to adopt rules consistent with law.

This concludes the review of Chapter 7, Surveying.

TRD-200500850
Trace Finley
Policy Director
General Land Office
Filed: February 24, 2005

Texas Department of Transportation

Title 43, Part 1

In accordance with Government Code, §2001.039, the Texas Department of Transportation readopts 43 TAC Part 1, Chapter 2, concerning Environmental Policy. This concludes the review of Chapter 2.

The proposed rule review was published in the November 5, 2004, issue of the *Texas Register* (29 TexReg 10273). No comments were received regarding the readoption of these rules. The Texas Transportation Commission has reviewed these rules and determined that the reasons for initially adopting them continue to exist.

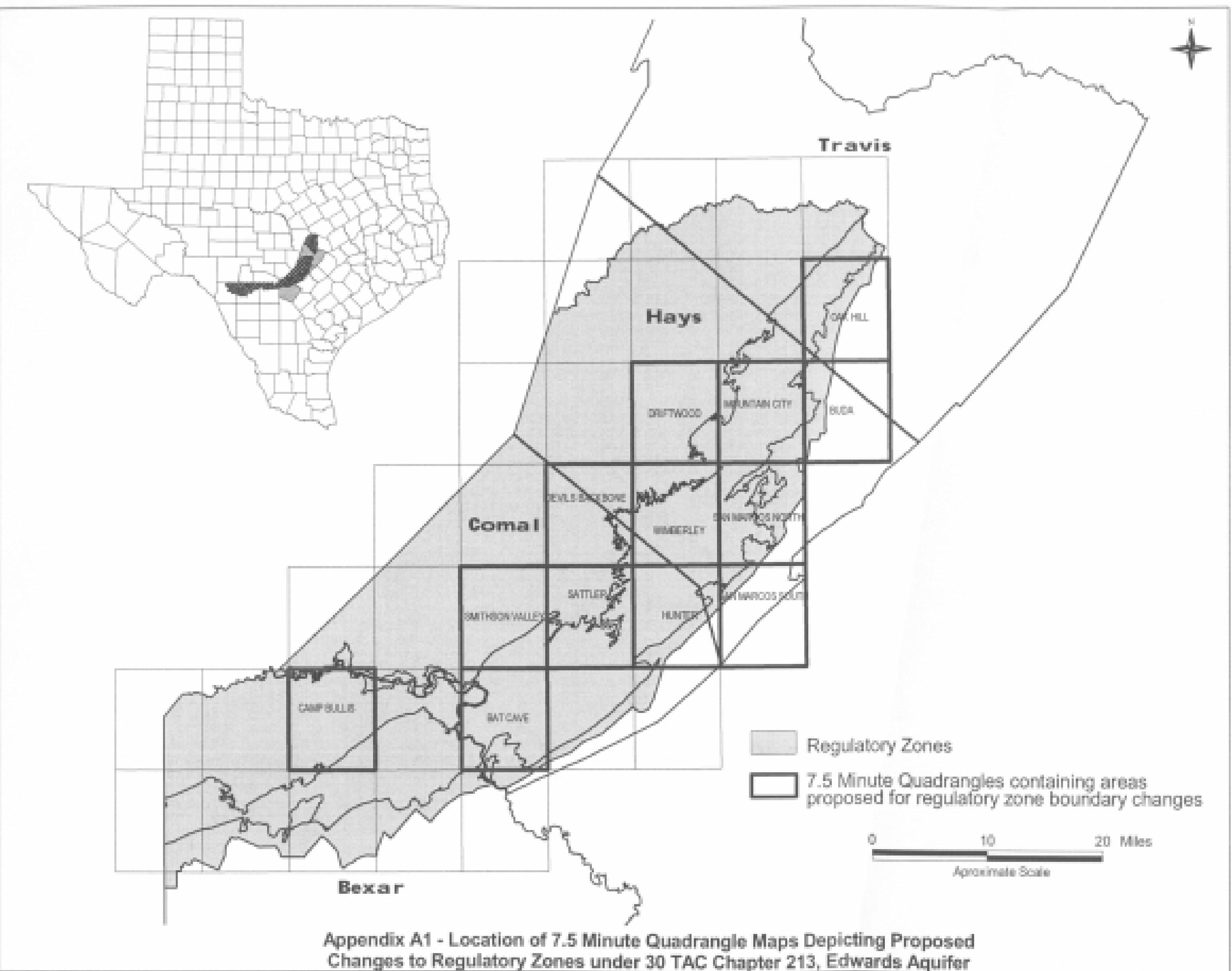
TRD-200500876
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: February 25, 2005

TABLES & GRAPHICS

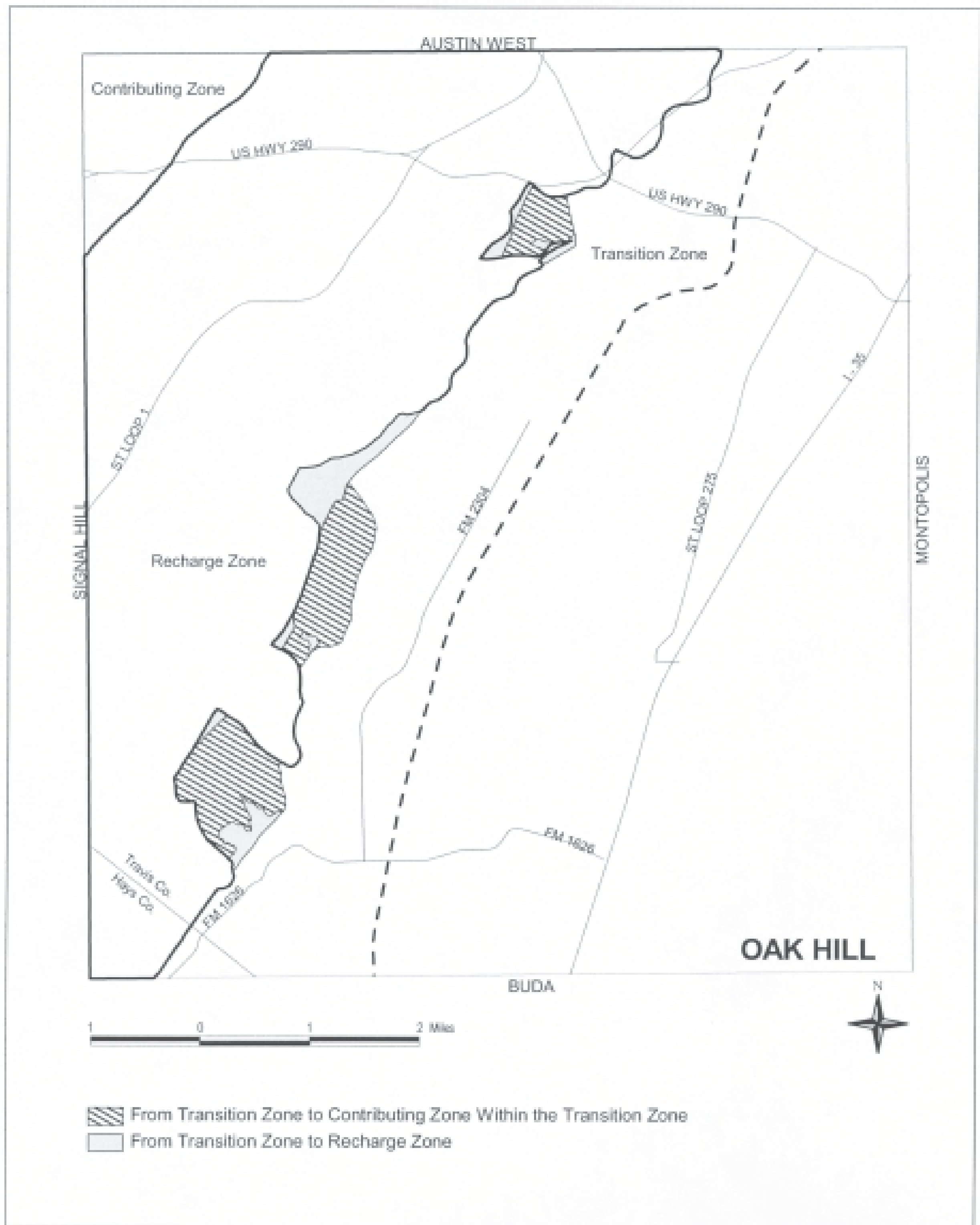
Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

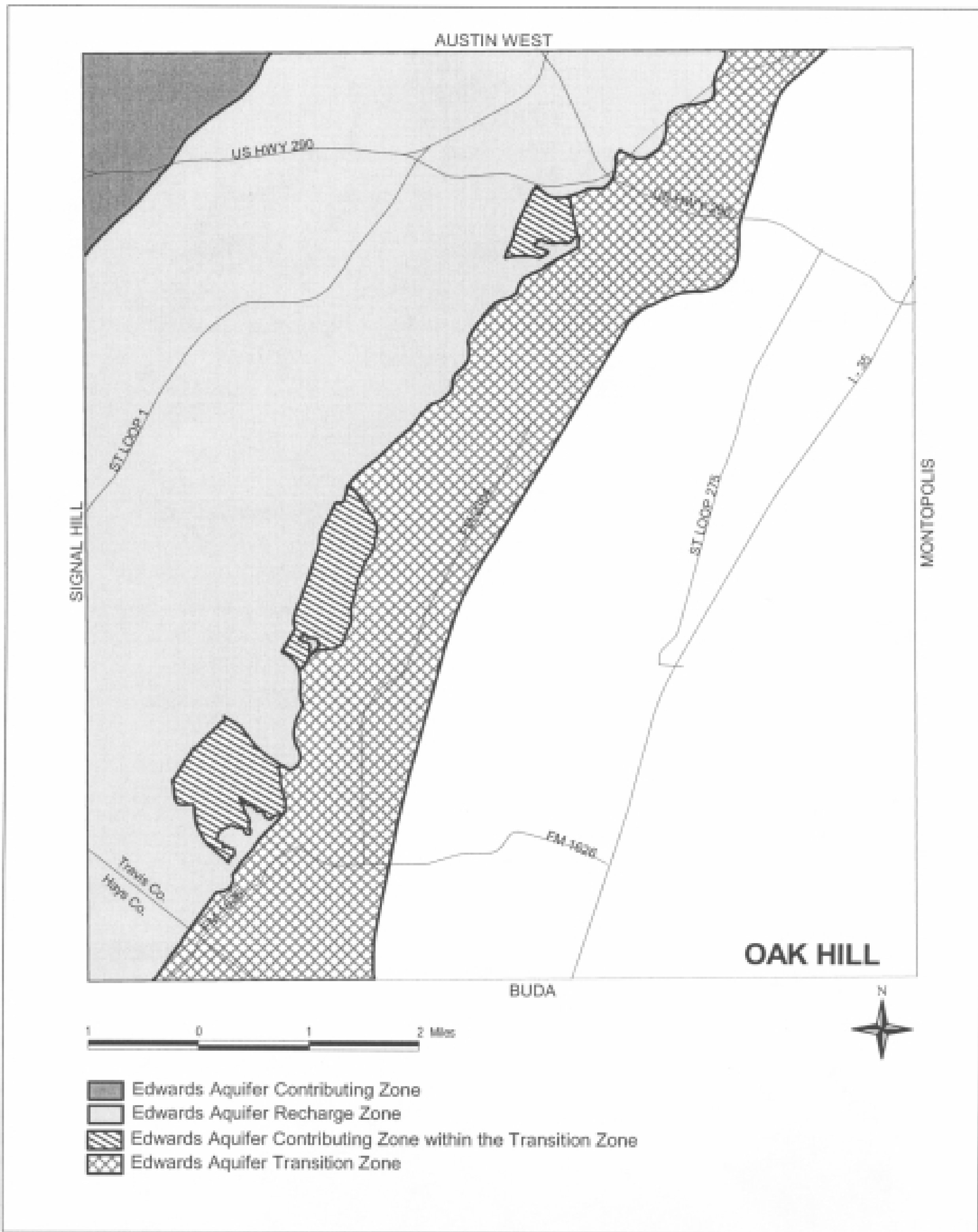
Figure: 30 TAC Chapter 213--Preamble



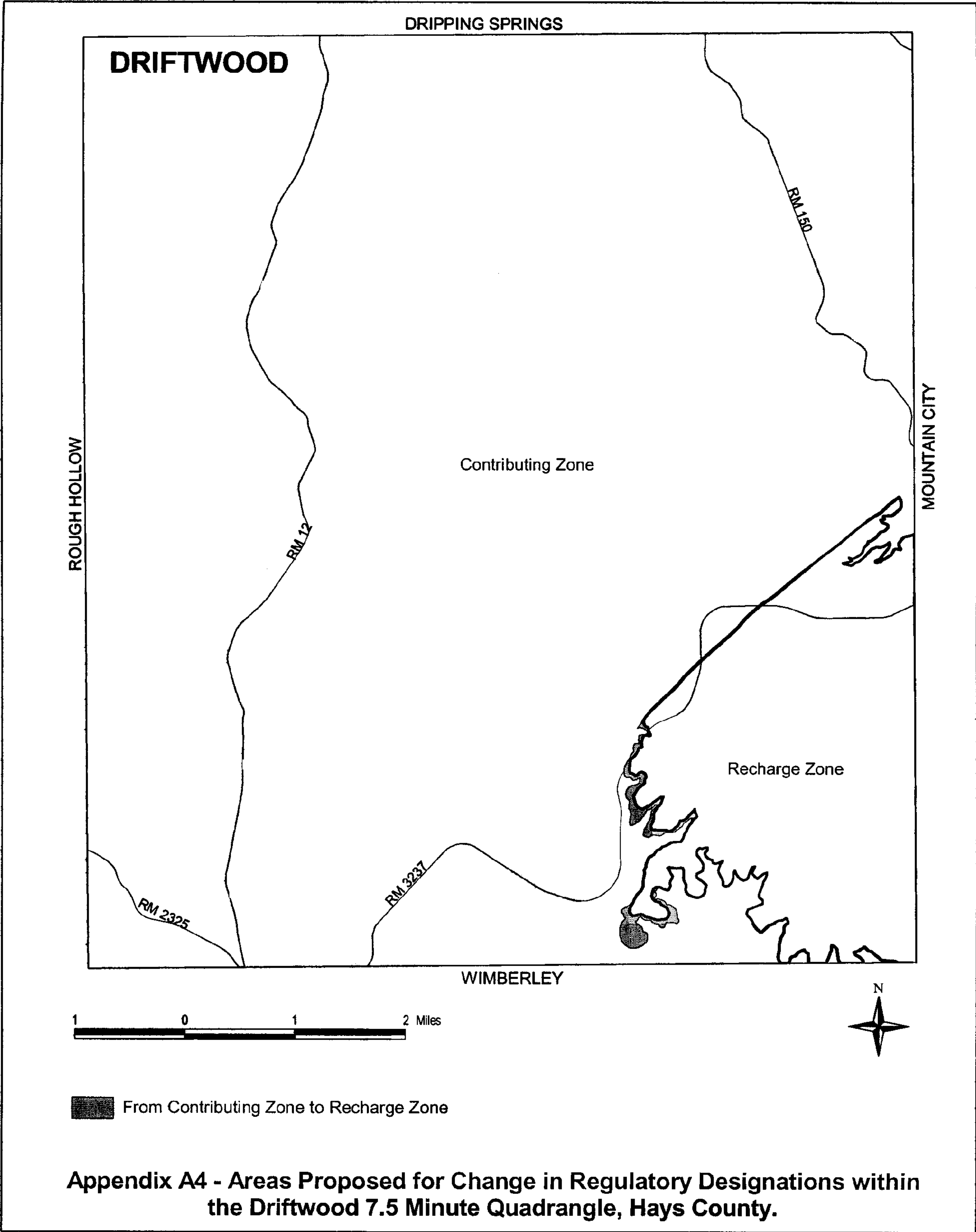
Appendix A1 - Location of 7.5 Minute Quadrangle Maps Depicting Proposed Changes to Regulatory Zones under 30 TAC Chapter 213, Edwards Aquifer



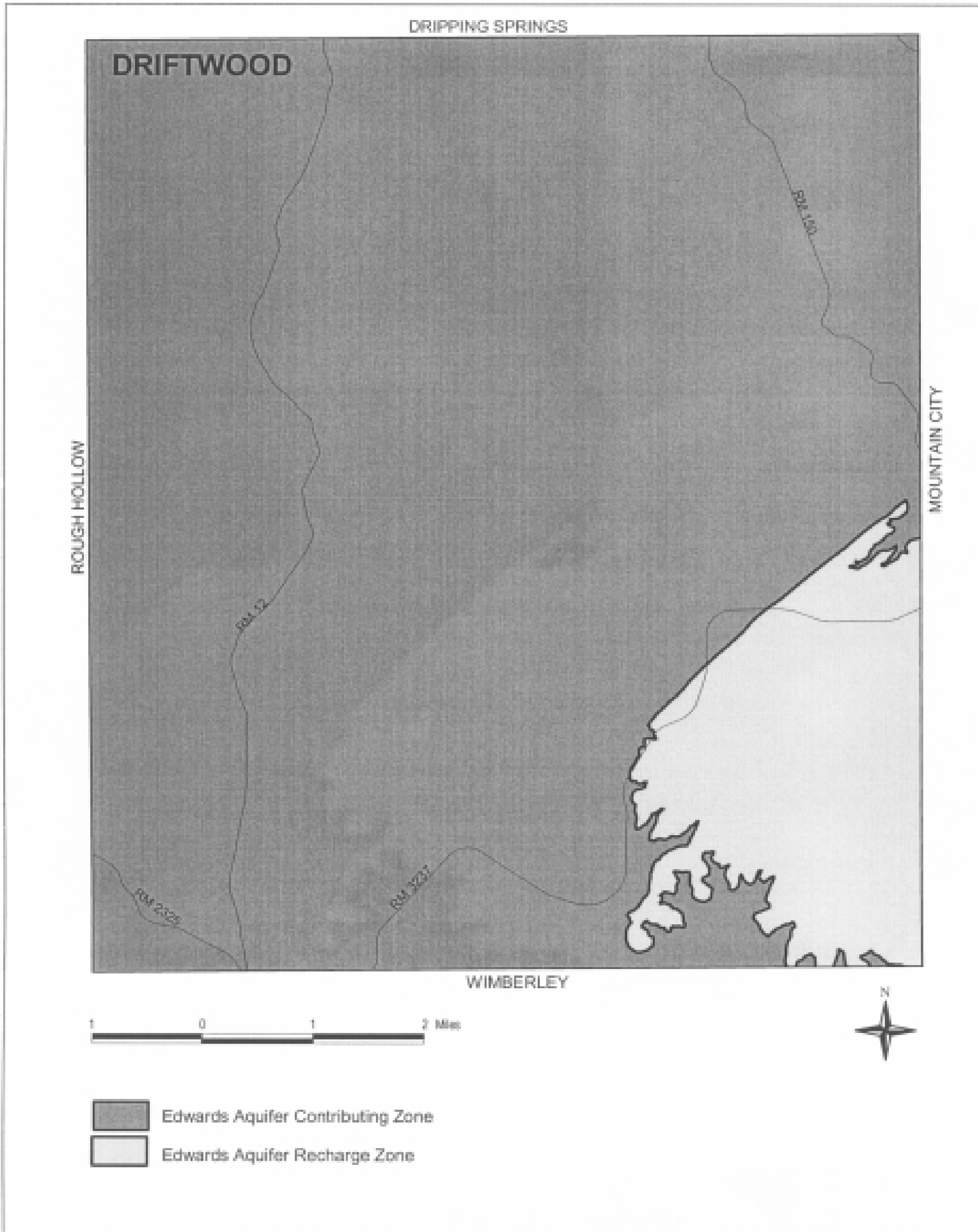
Appendix A2 - Areas Proposed for Change in Regulatory Designations within the Oak Hill 7.5 Minute Quadrangle, Hays and Travis Counties.



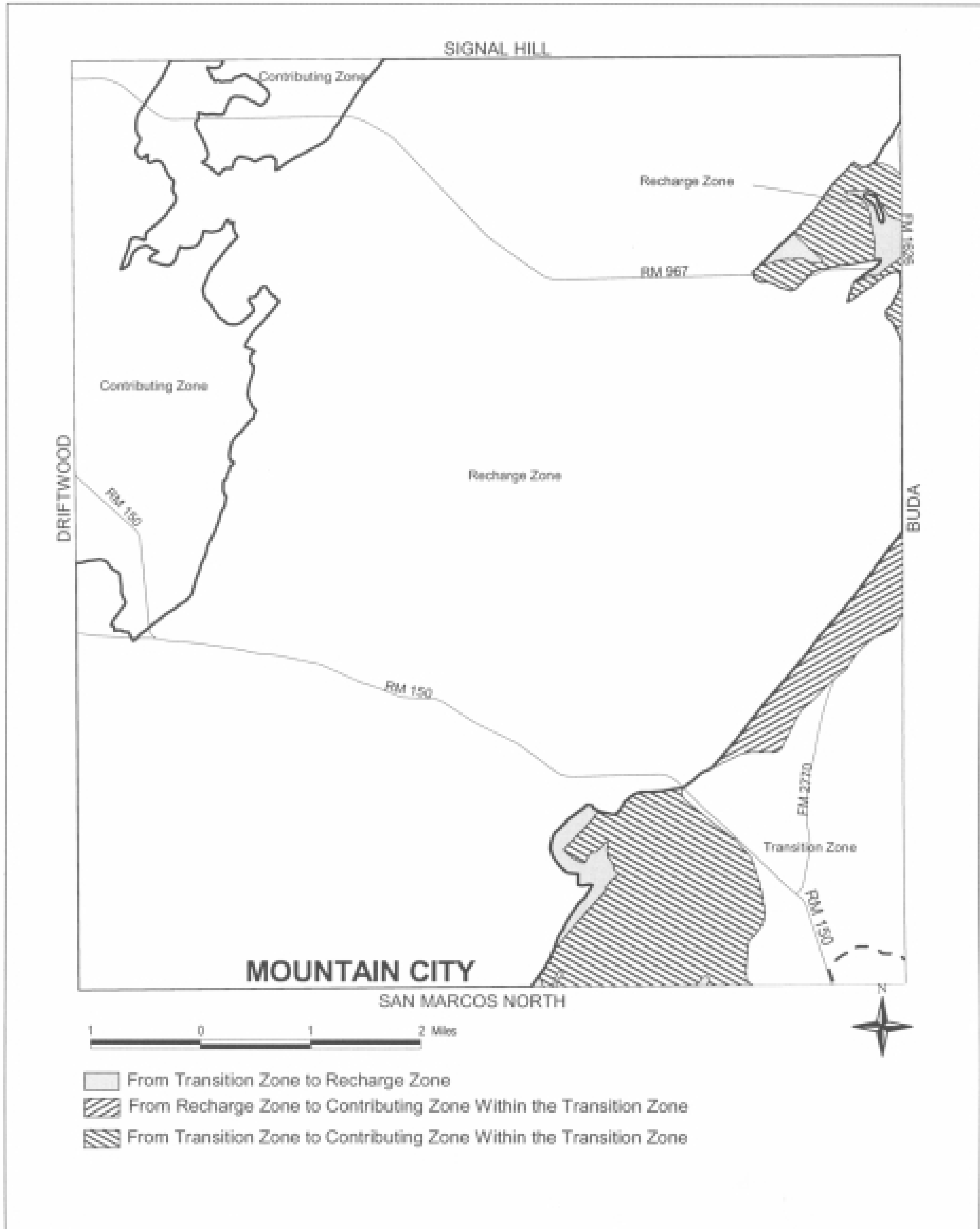
Appendix A3 - Regulatory Zones Incorporating Proposed Changes within the Oak Hill 7.5 Minute Quadrangle, Hays and Travis Counties.



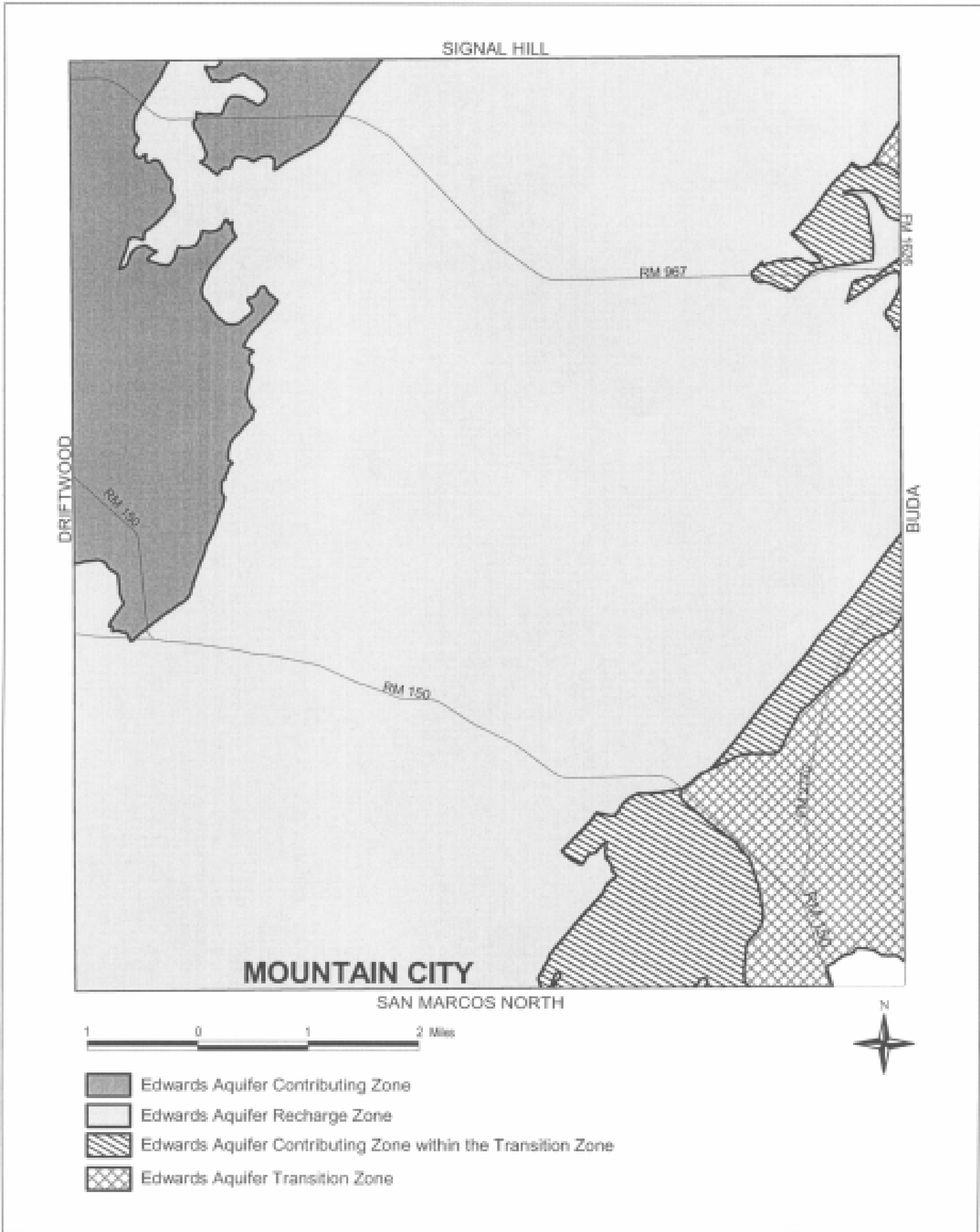
Appendix A4 - Areas Proposed for Change in Regulatory Designations within the Driftwood 7.5 Minute Quadrangle, Hays County.



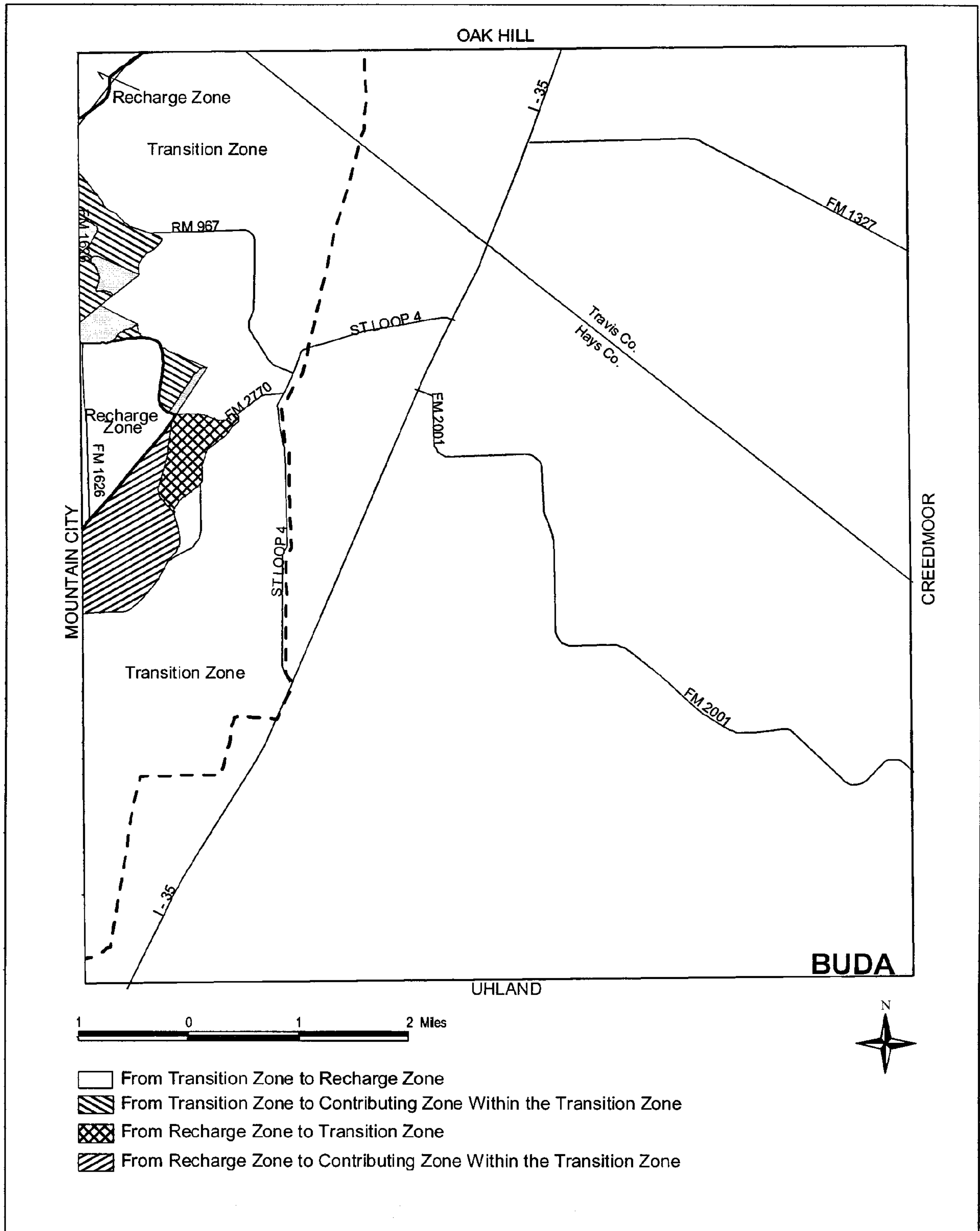
Appendix A5 - Regulatory Zones Incorporating Proposed Changes within the Driftwood 7.5 Minute Quadrangle, Hays County.



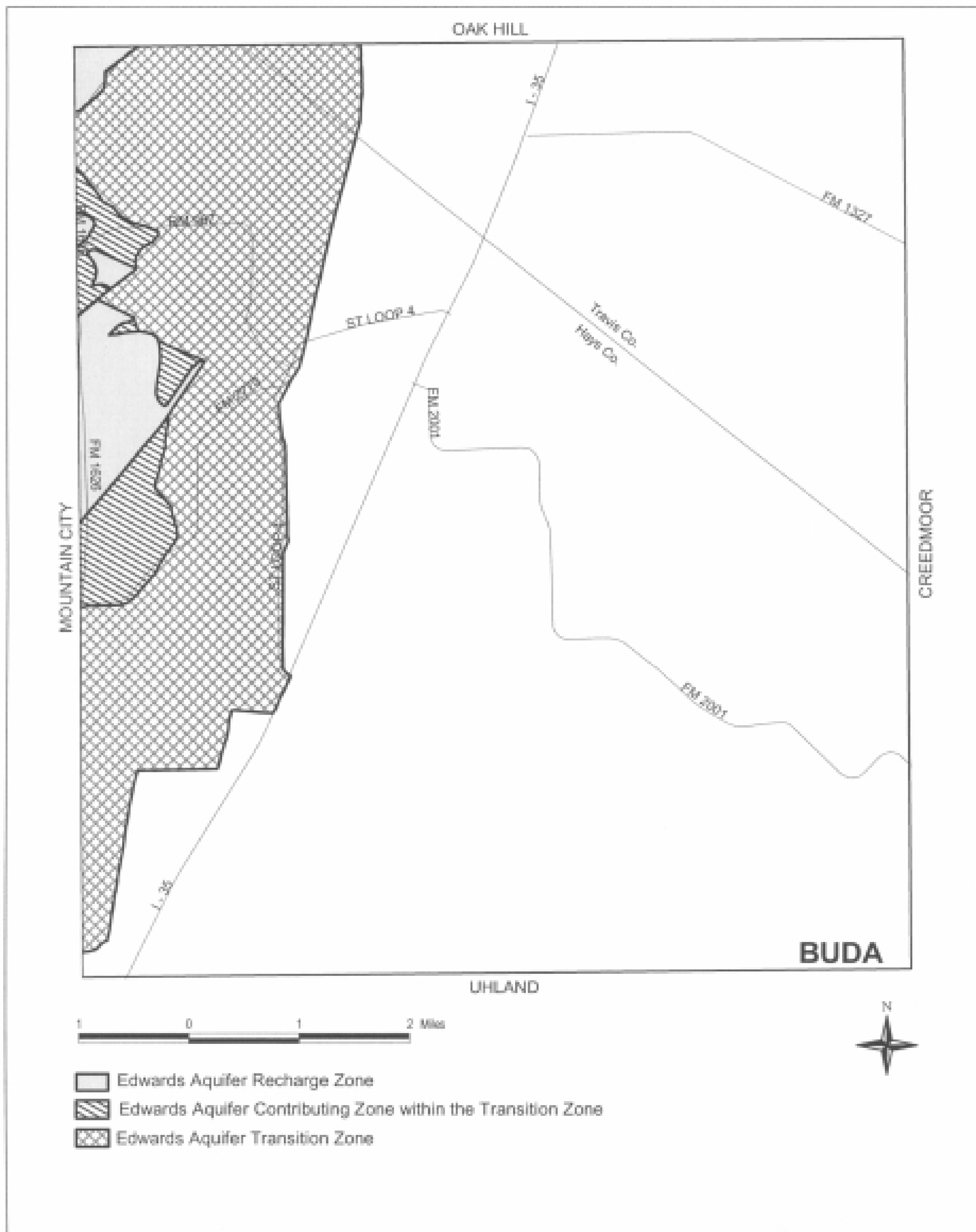
Appendix A6 - Areas Proposed for Change in Regulatory Designations within the Mountain City 7.5 Minute Quadrangle, Hays County.



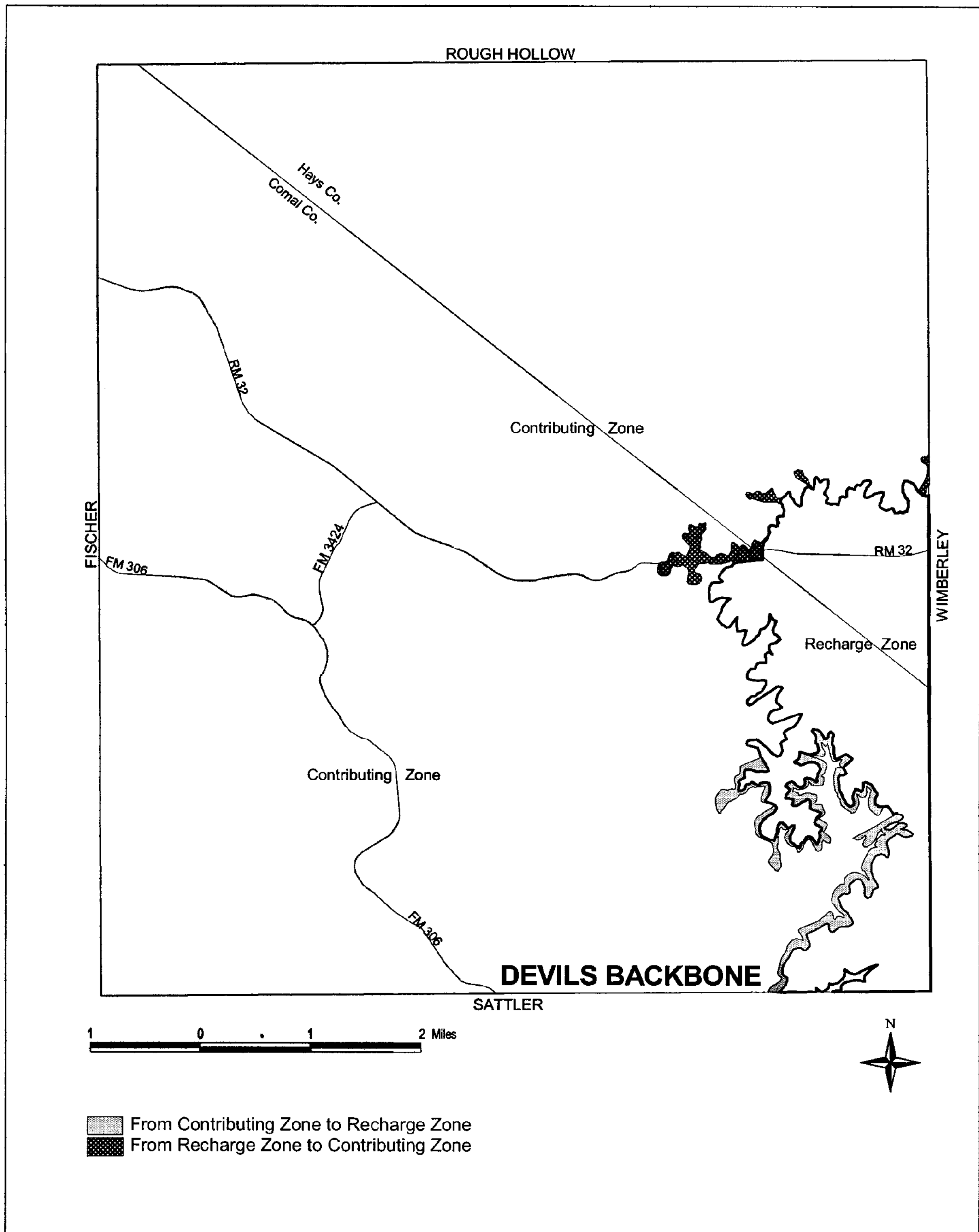
Appendix A7 - Regulatory Zones Incorporating Proposed Changes within the Mountain City 7.5 Minute Quadrangle, Hays County



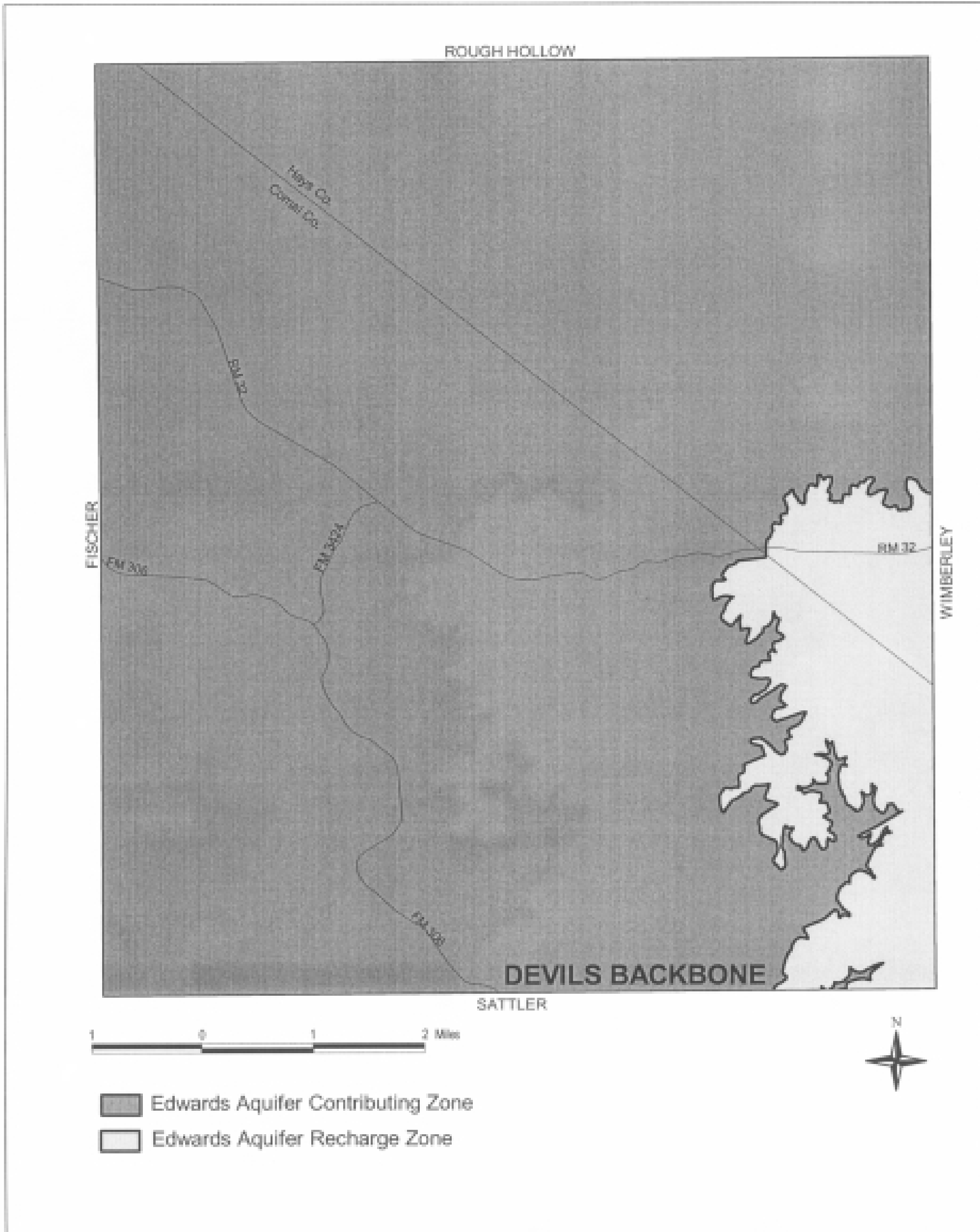
Appendix A8 - Areas Proposed for Change in Regulatory Designations within the Buda 7.5 Minute Quadrangle, Hays and Travis Counties.



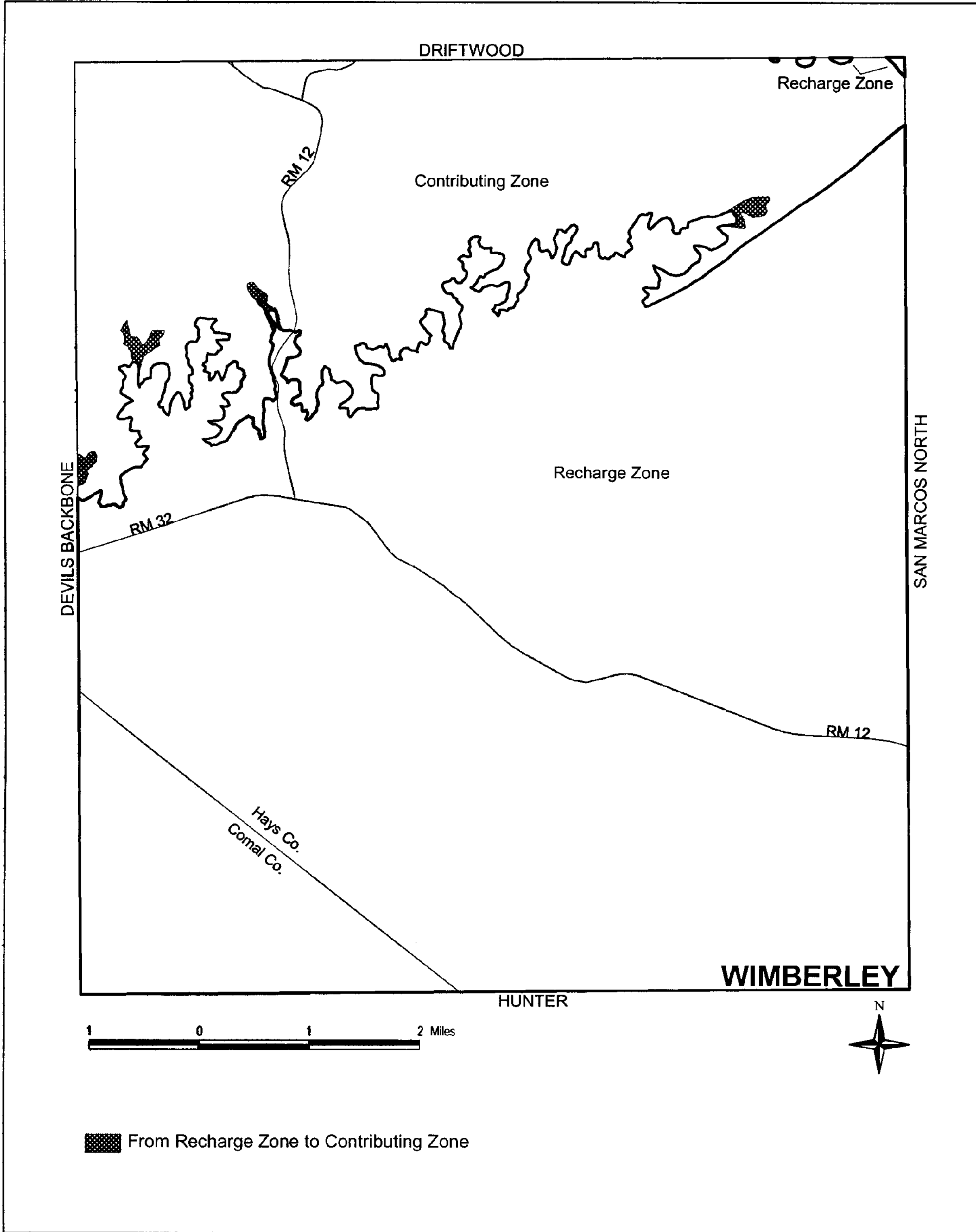
Appendix A9 - Regulatory Zones Incorporating Proposed Changes within the Buda 7.5 Minute Quadrangle, Hays and Travis Counties.



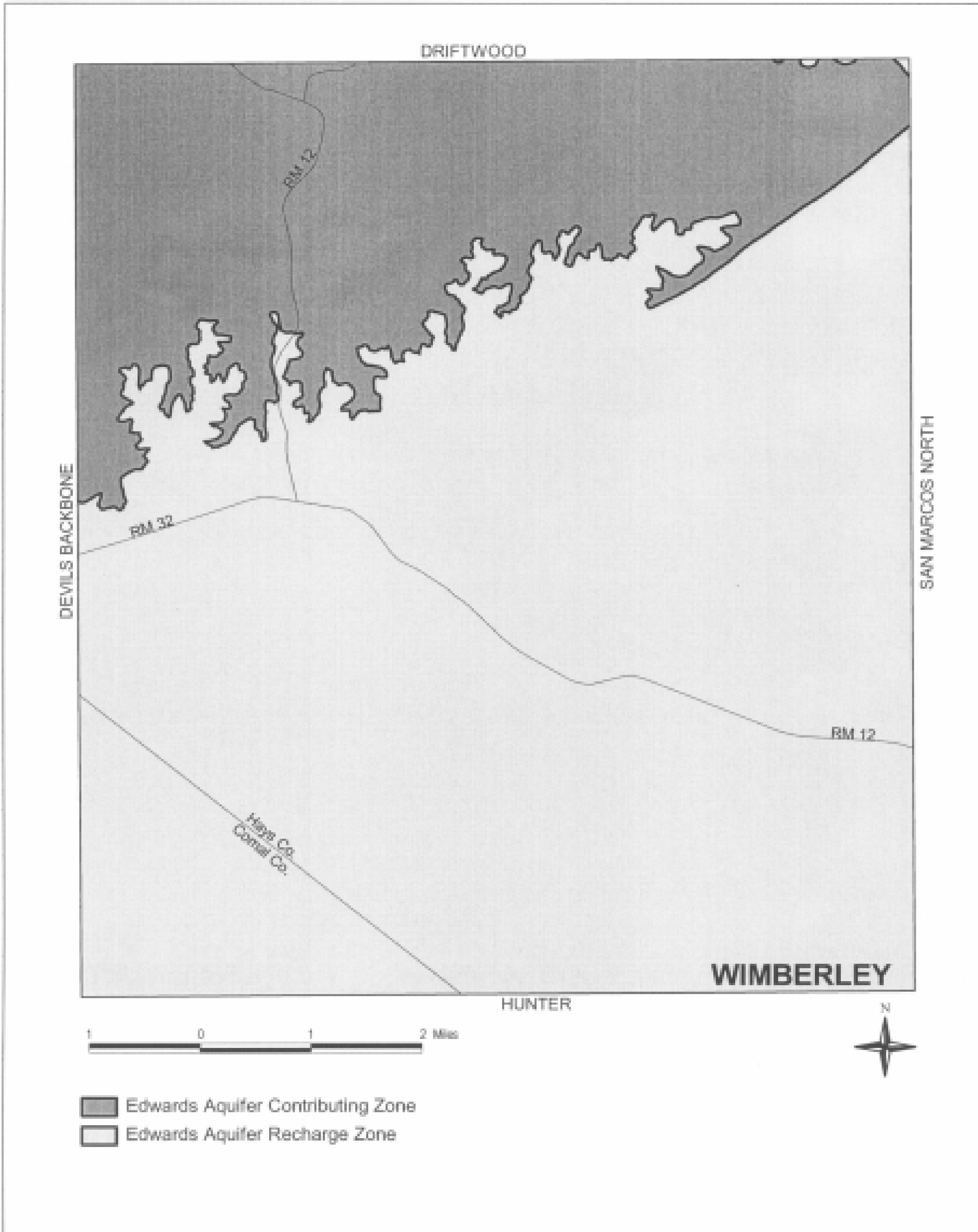
Appendix A10 - Areas Proposed for Change in Regulatory Designations within the Devils Backbone 7.5 Minute Quadrangle, Comal and Hays Counties.



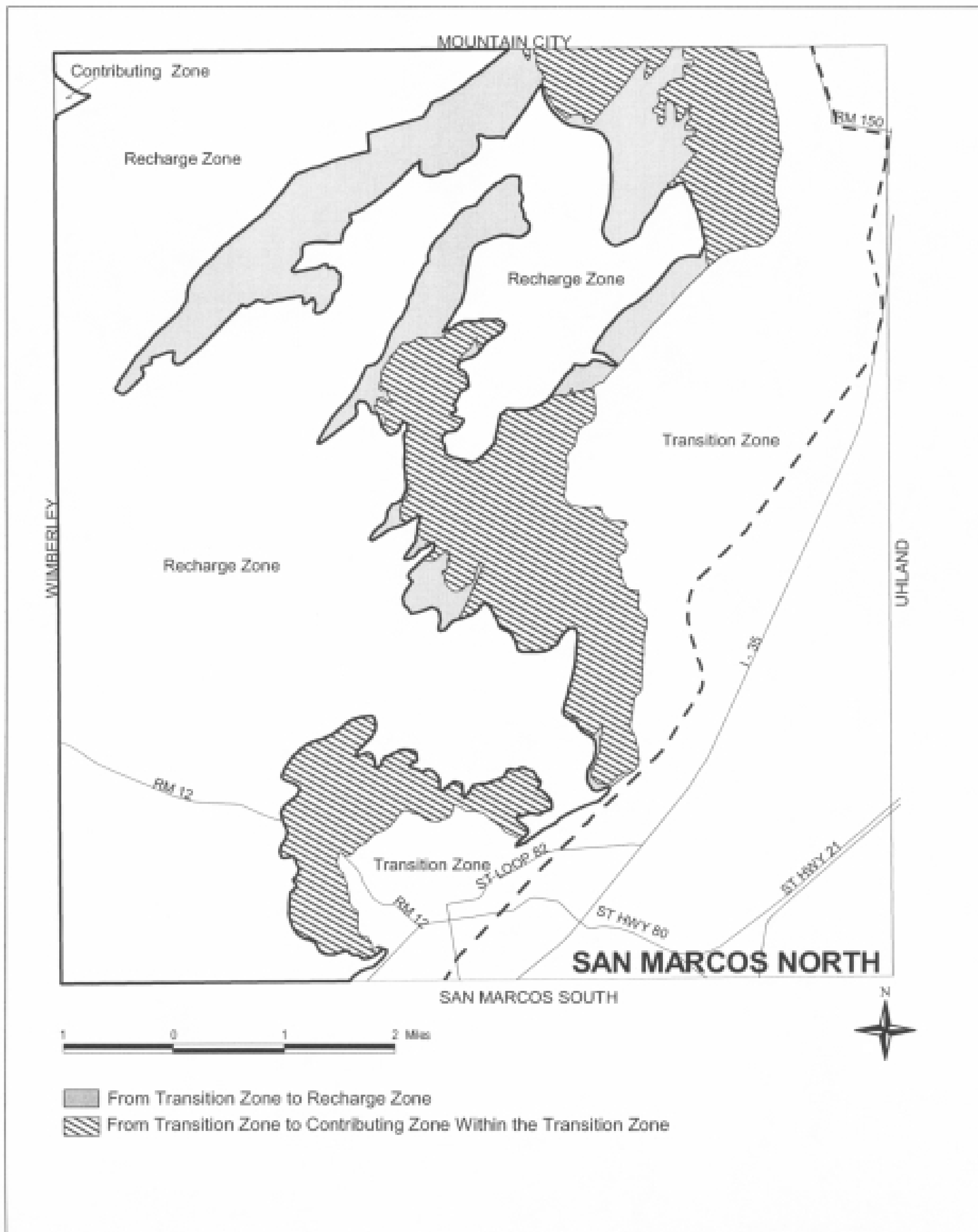
Appendix A11 - Regulatory Zones Incorporating Proposed Changes within the Devils Backbone 7.5 Minute Quadrangle, Comal and Hays Counties.



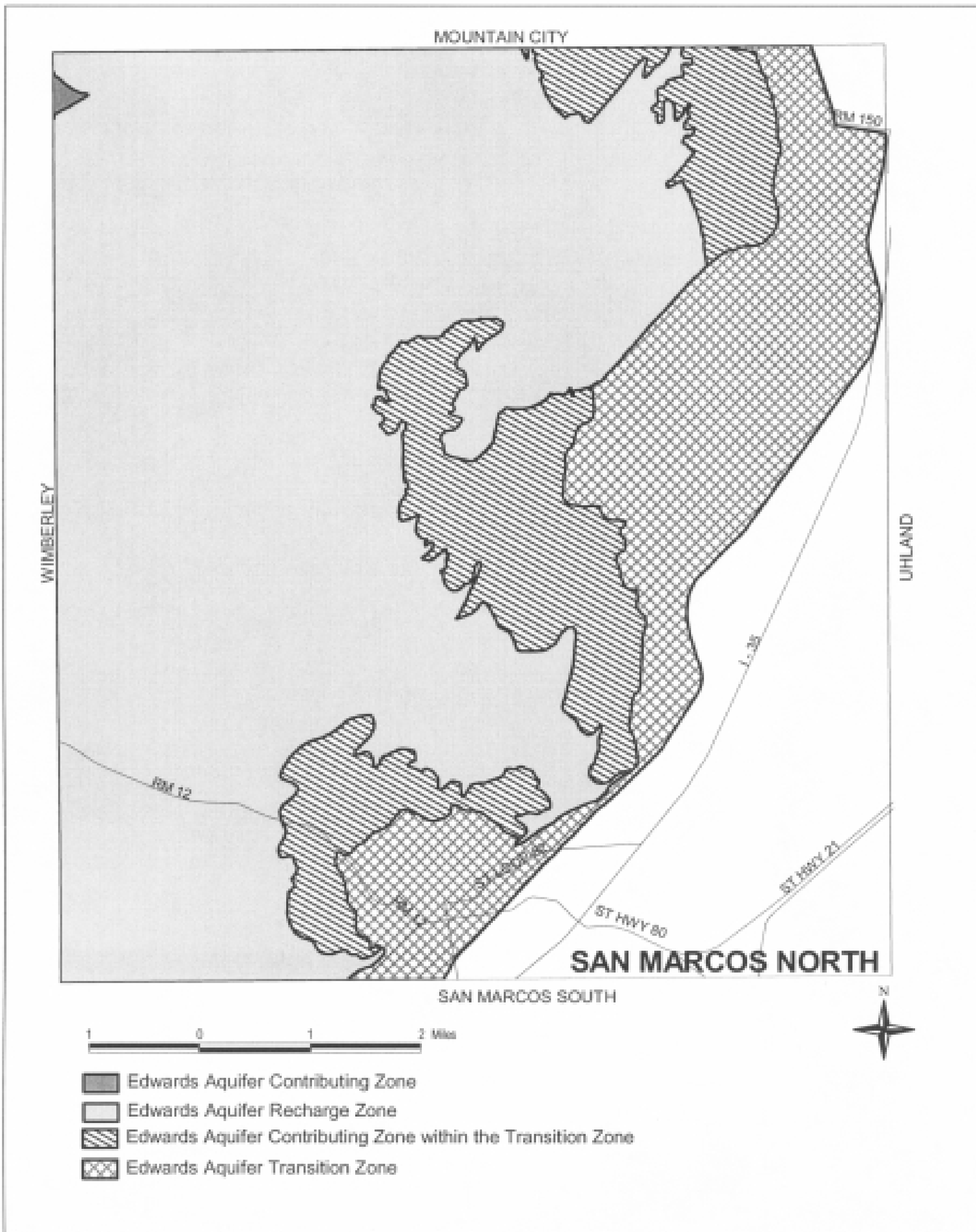
Appendix A12 - Areas Proposed for Change in Regulatory Designations within the Wimberley 7.5 Minute Quadrangle, Comal and Hays Counties.



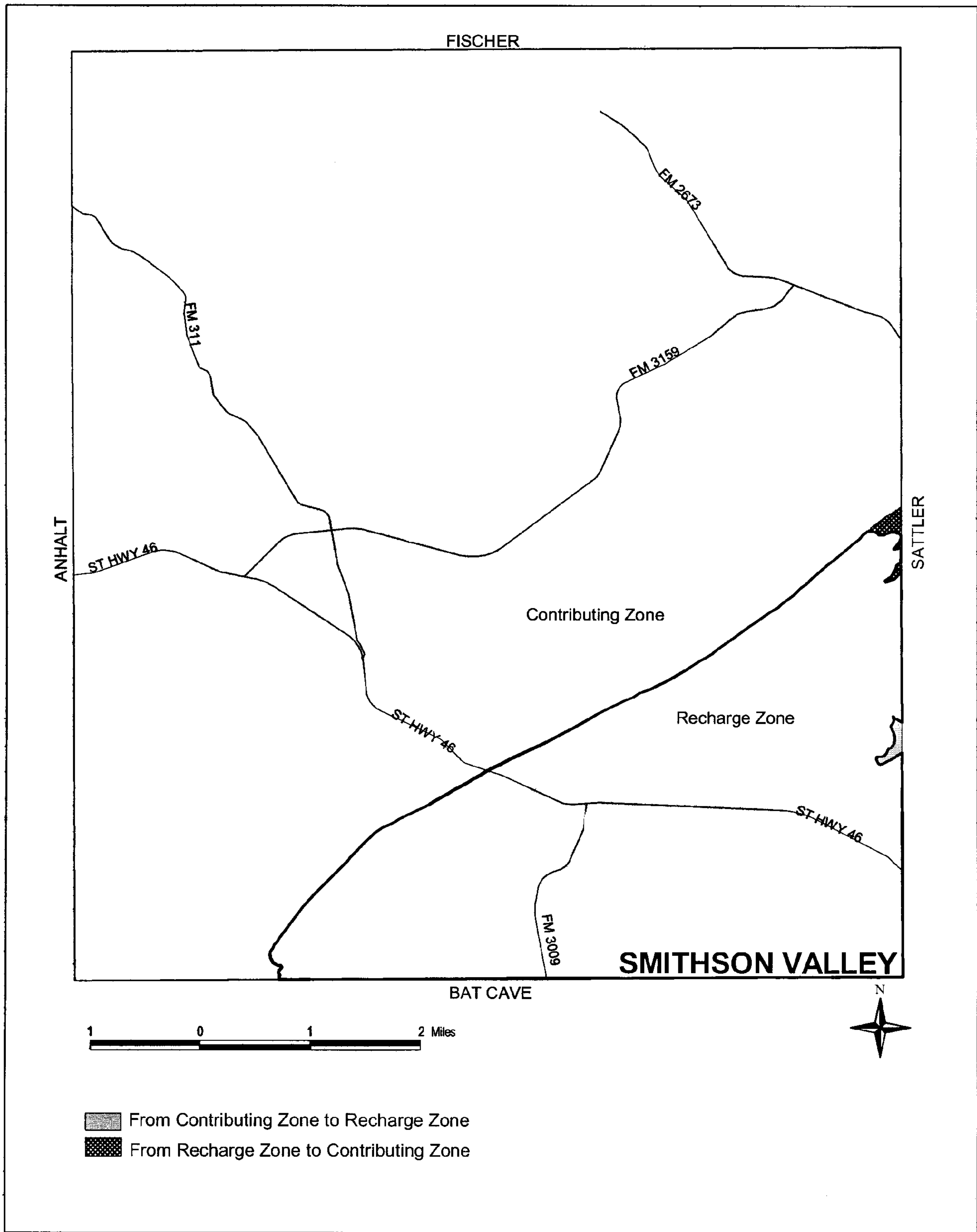
Appendix A13 - Regulatory Zones Incorporating Proposed Changes within the Wimberley 7.5 Minute Quadrangle, Comal and Hays Counties.



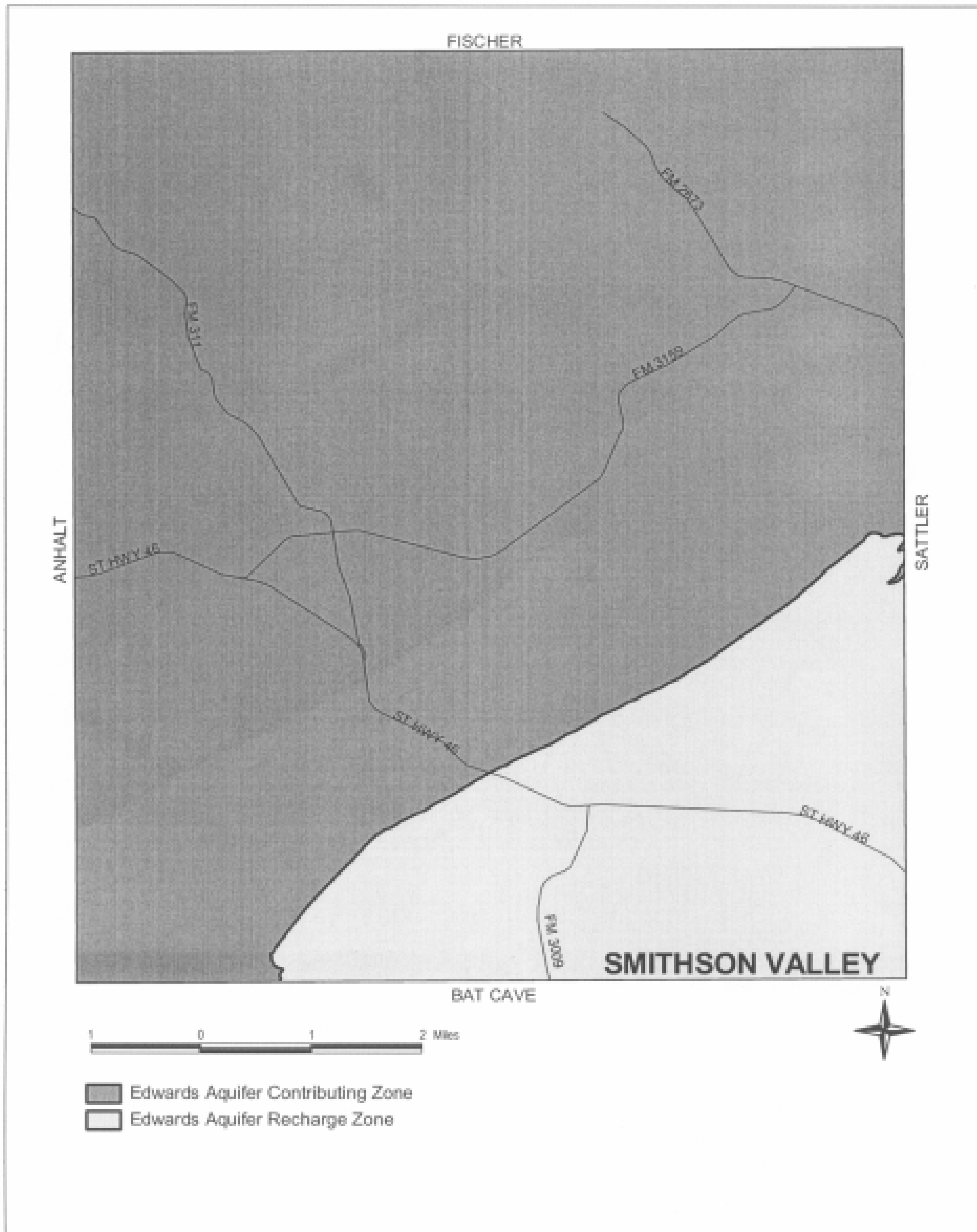
Appendix A14 - Areas Proposed for Change in Regulatory Designations within the San Marcos North 7.5 Minute Quadrangle, Hays County.



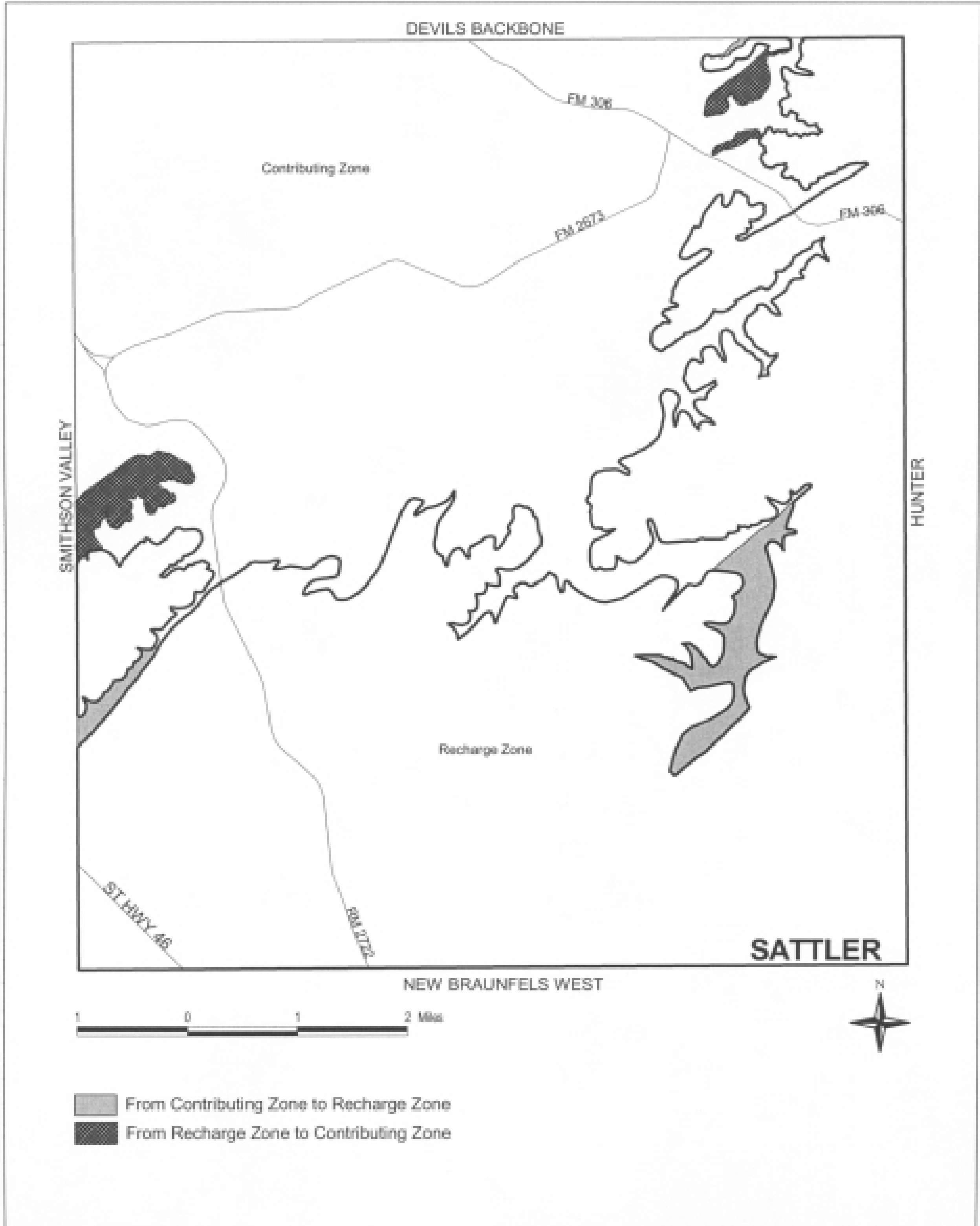
Appendix A15 - Regulatory Zones Incorporating Proposed Changes within the San Marcos North 7.5 Minute Quadrangle, Hays County.



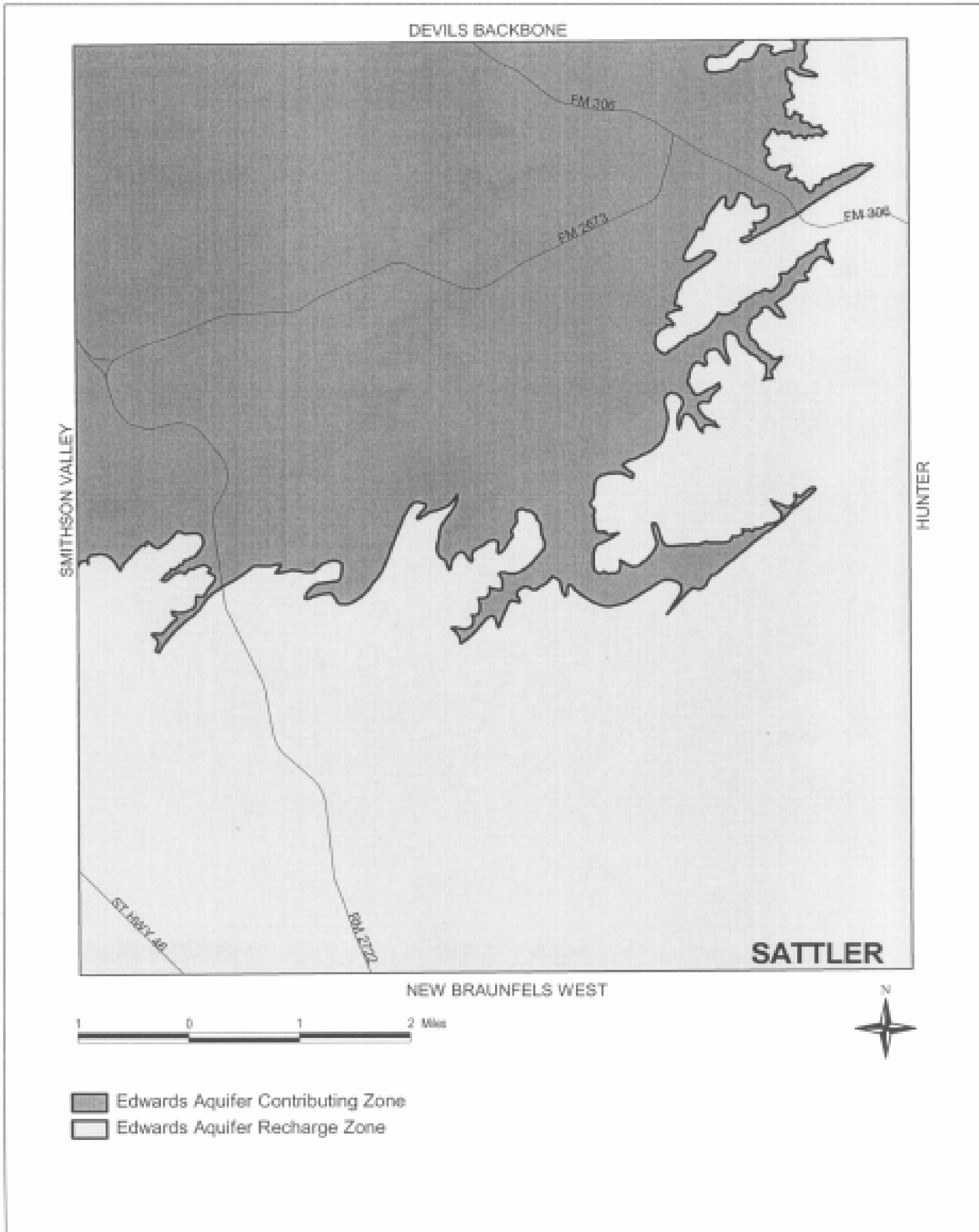
Appendix A16 - Areas Proposed for Change in Regulatory Designations within the Smithson Valley 7.5 Minute Quadrangle, Comal County.



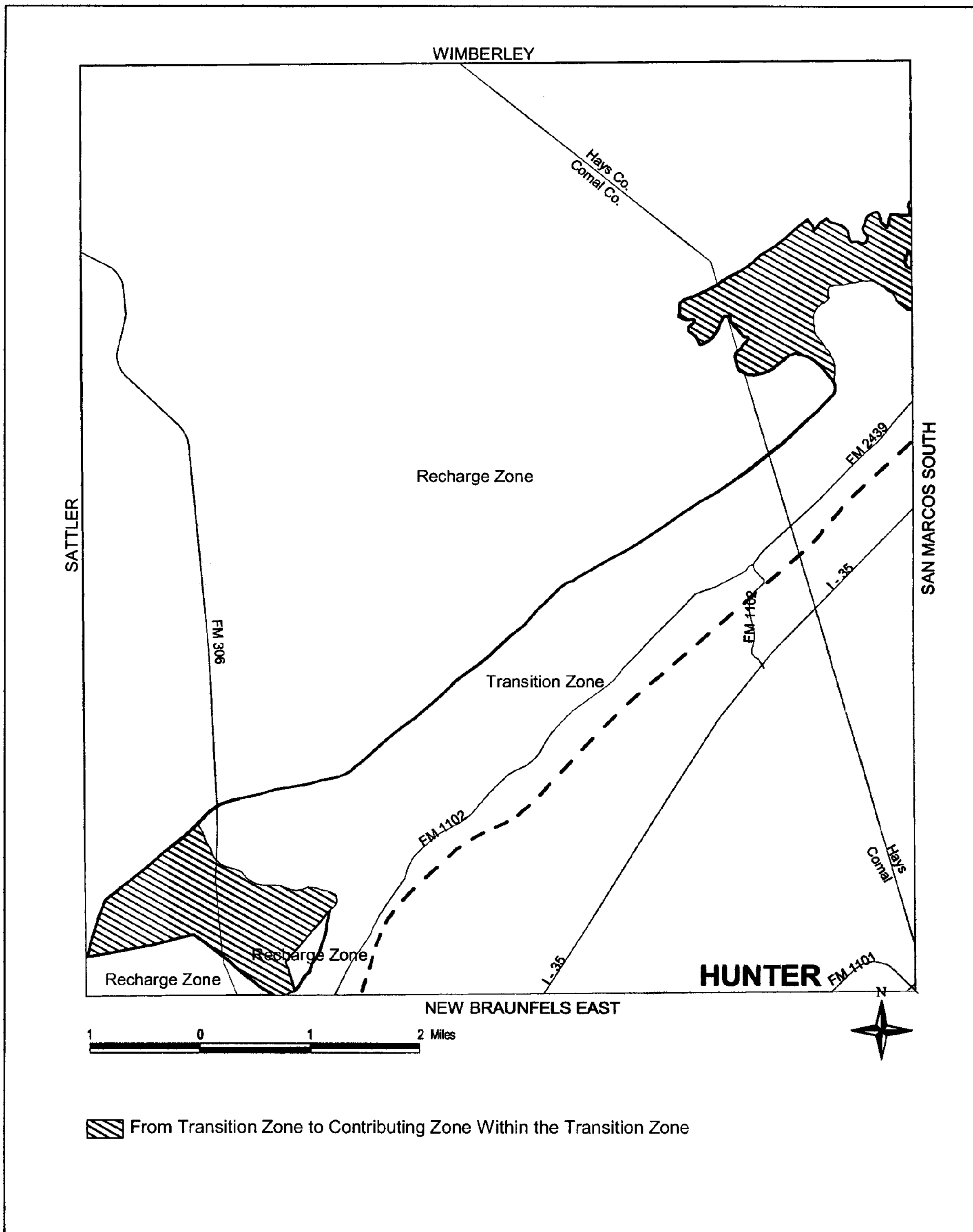
Appendix A17 - Regulatory Zones Incorporating Proposed Changes within the Smithson Valley 7.5 Minute Quadrangle, Comal County.



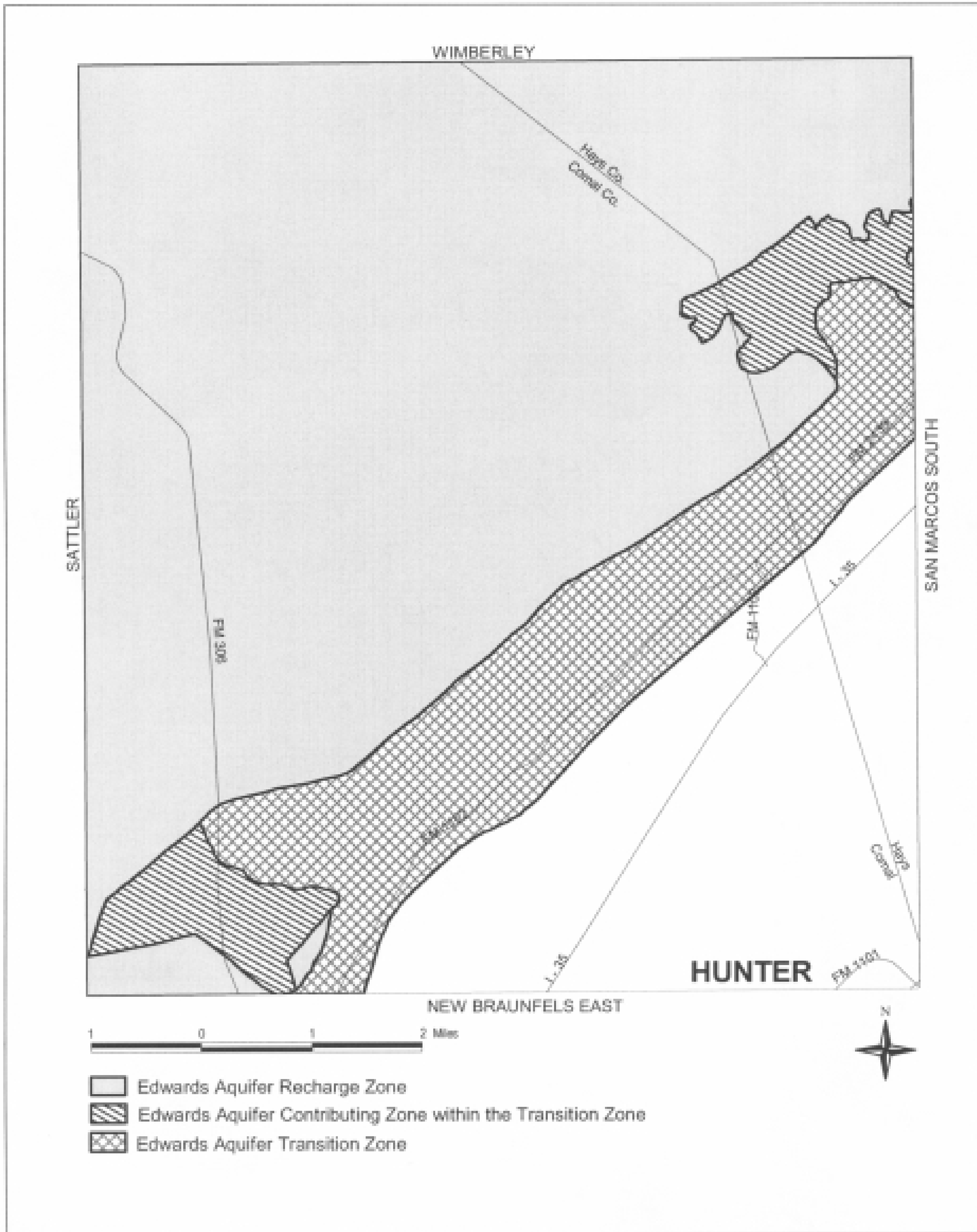
Appendix A18 - Areas Proposed for Change in Regulatory Designations within the Sattler 7.5 Minute Quadrangle, Comal County.



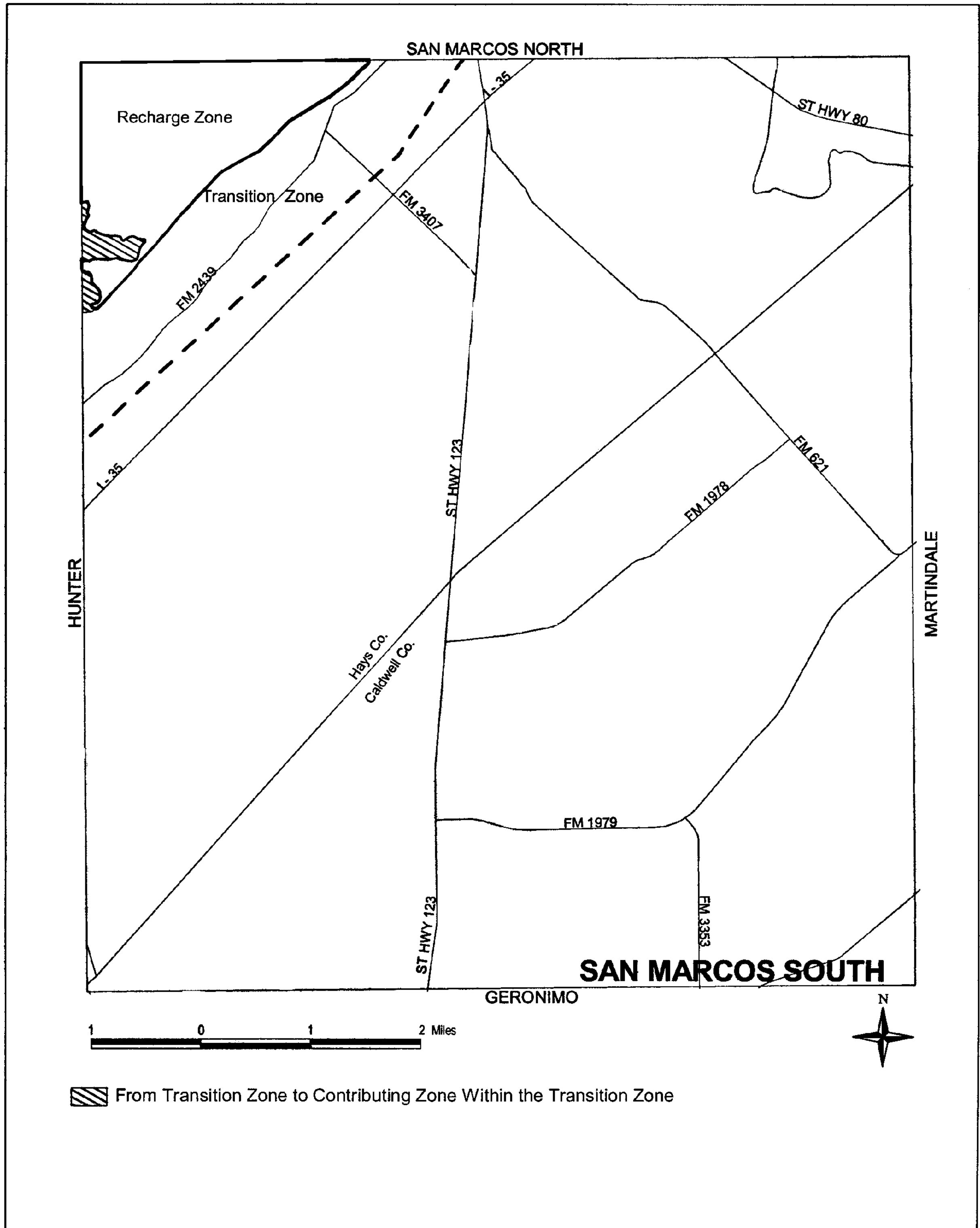
Appendix A19 - Regulatory Zones Incorporating Proposed Changes within the Sattler 7.5 Minute Quadrangle, Comal County.



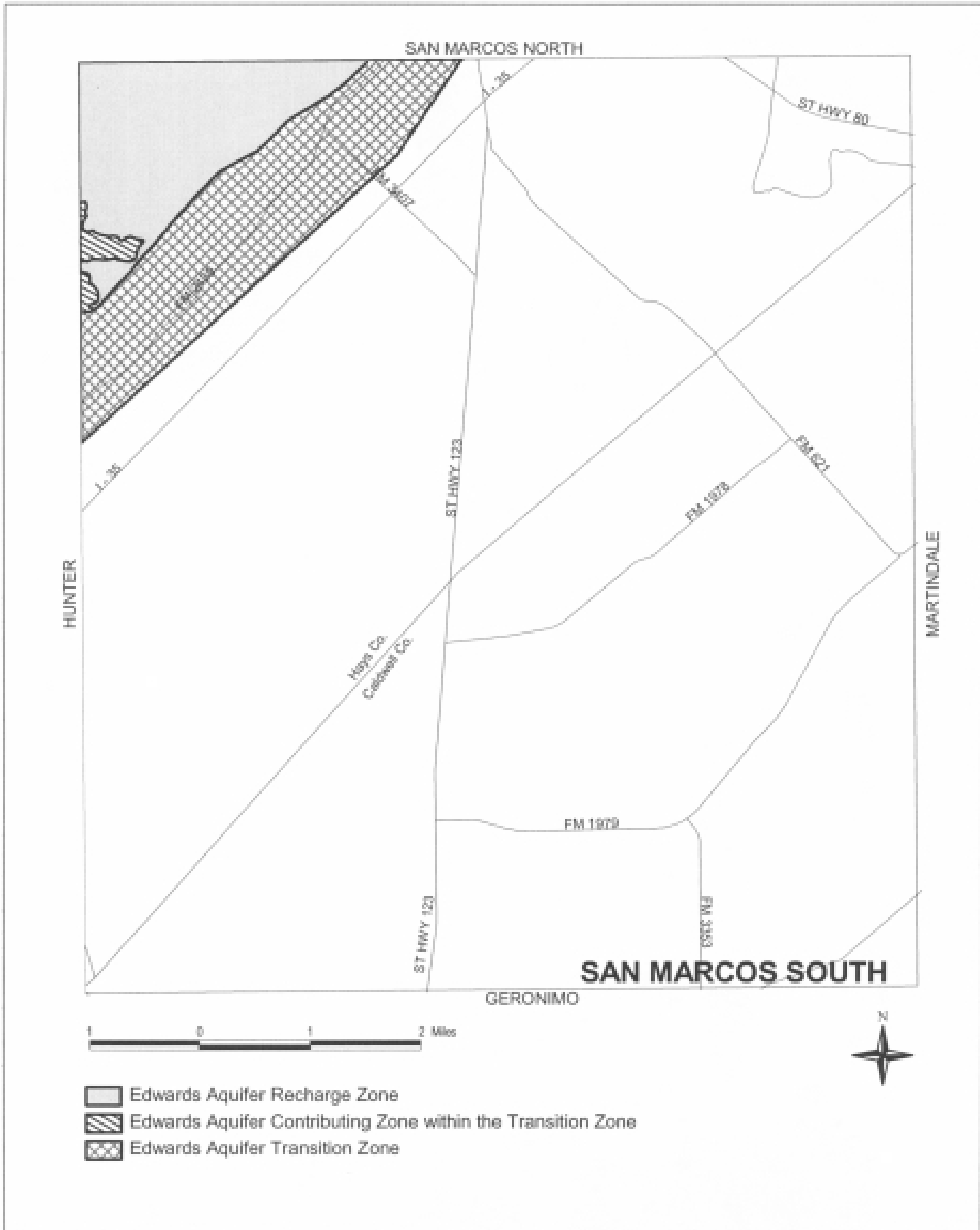
Appendix A 20 - Areas Proposed for Change in Regulatory Designations within the Hunter 7.5 Minute Quadrangle, Comal and Hays Counties.



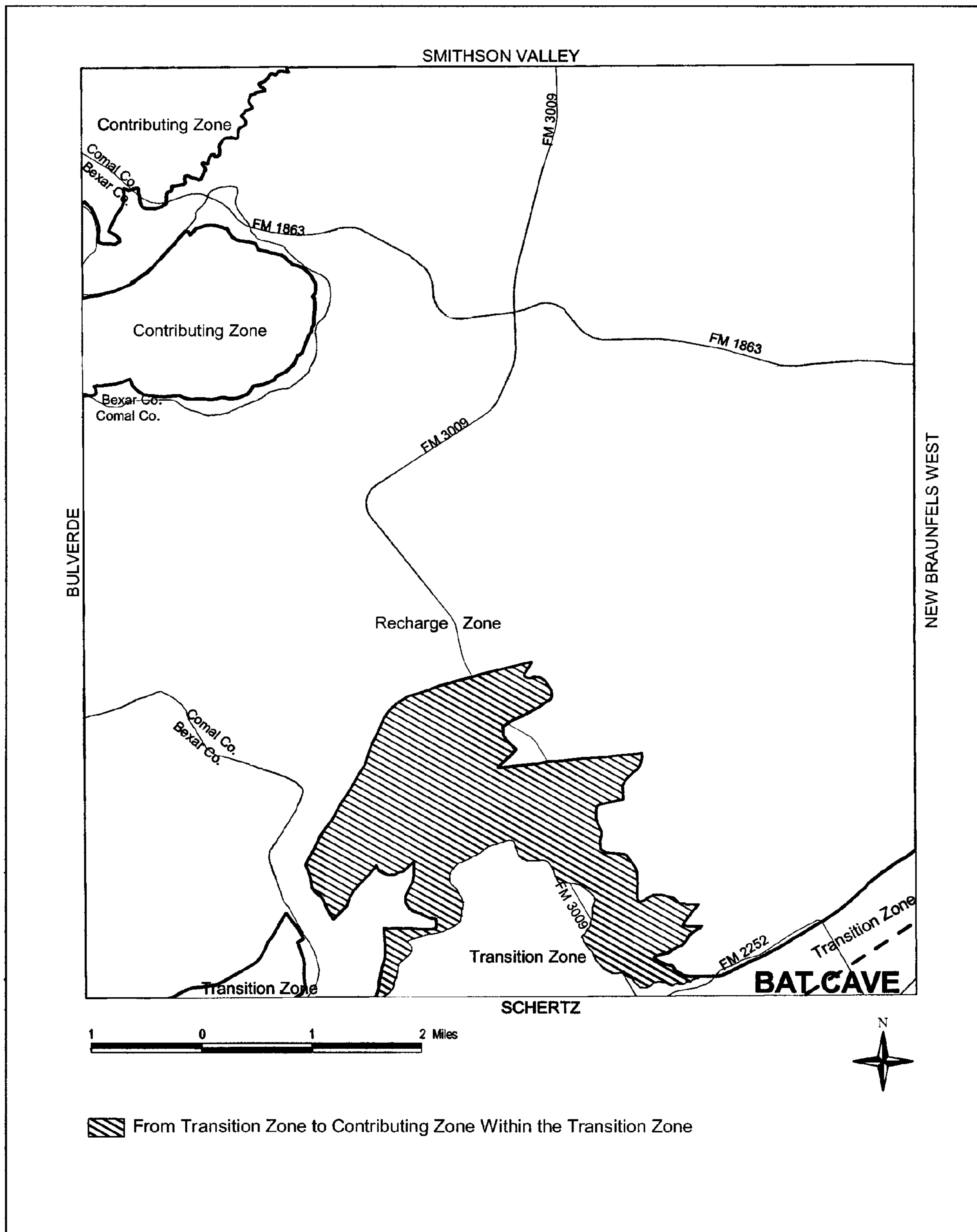
Appendix A21 - Regulatory Zones Incorporating Proposed Changes within the Hunter 7.5 Minute Quadrangle, Comal and Hays Counties.



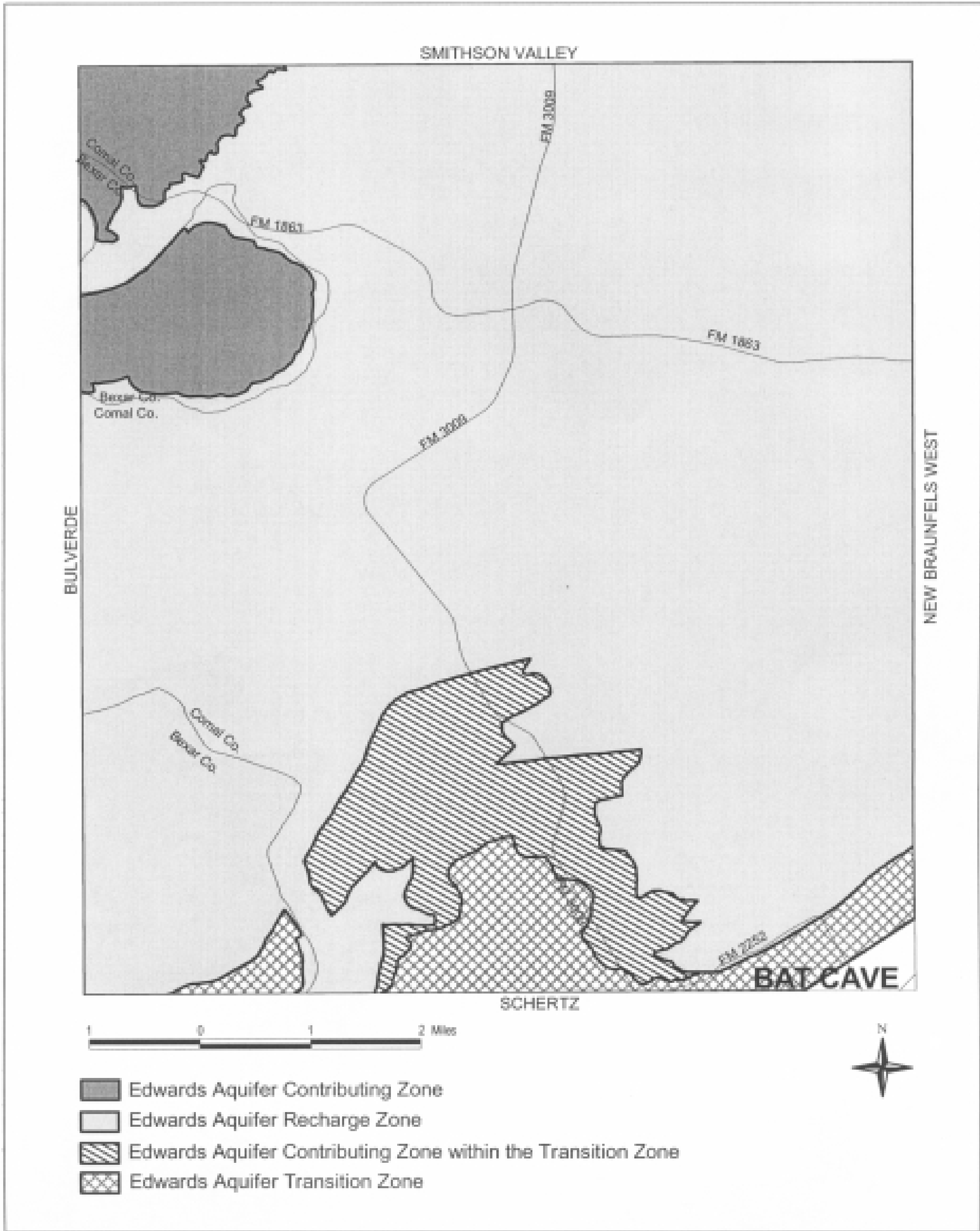
Appendix A22 - Areas Proposed for Change in Regulatory Designations within the San Marcos South 7.5 Minute Quadrangle, Hays County.



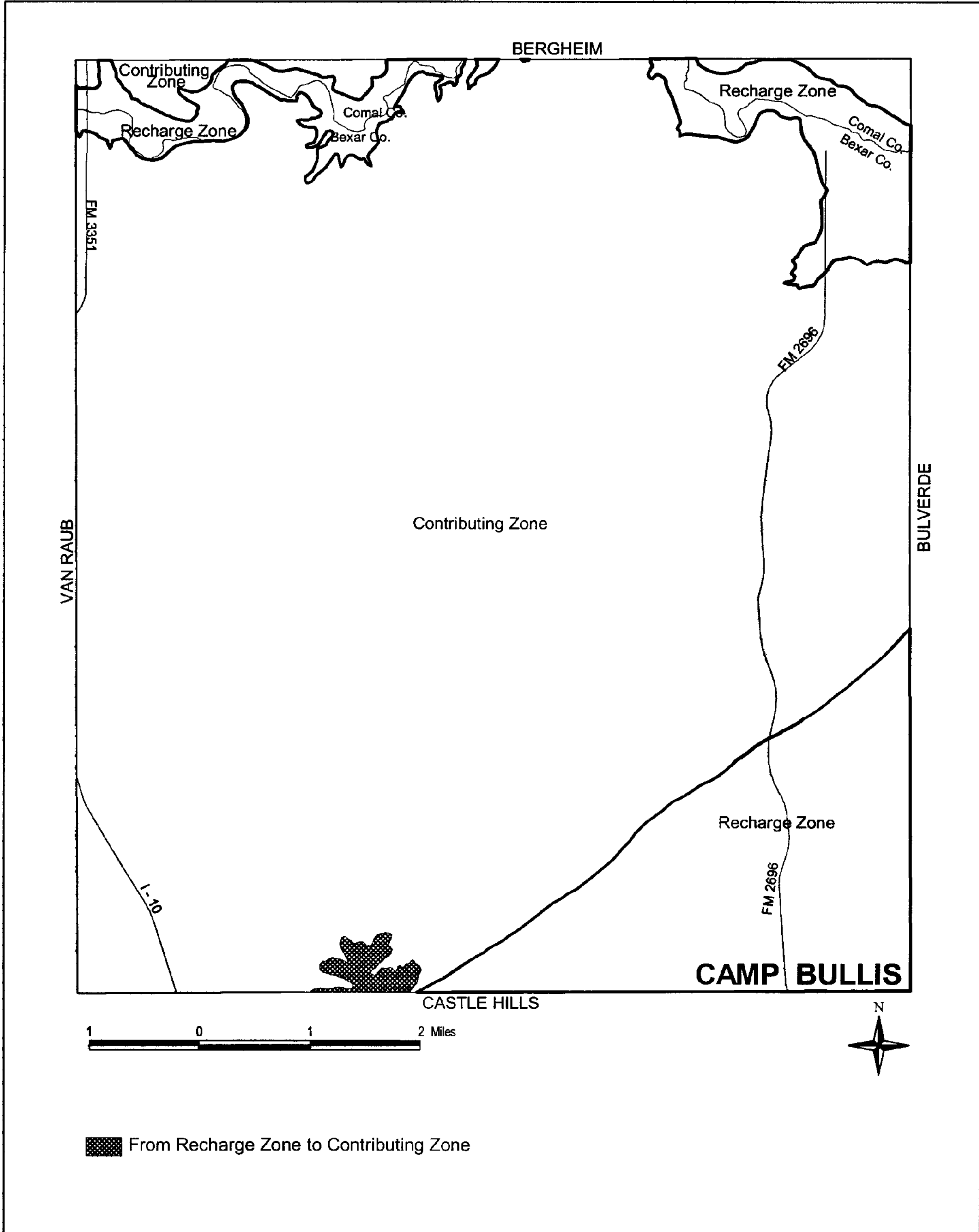
Appendix A23 - Regulatory Zones Incorporating Proposed Changes within the San Marcos South 7.5 Minute Quadrangle, Hays County.



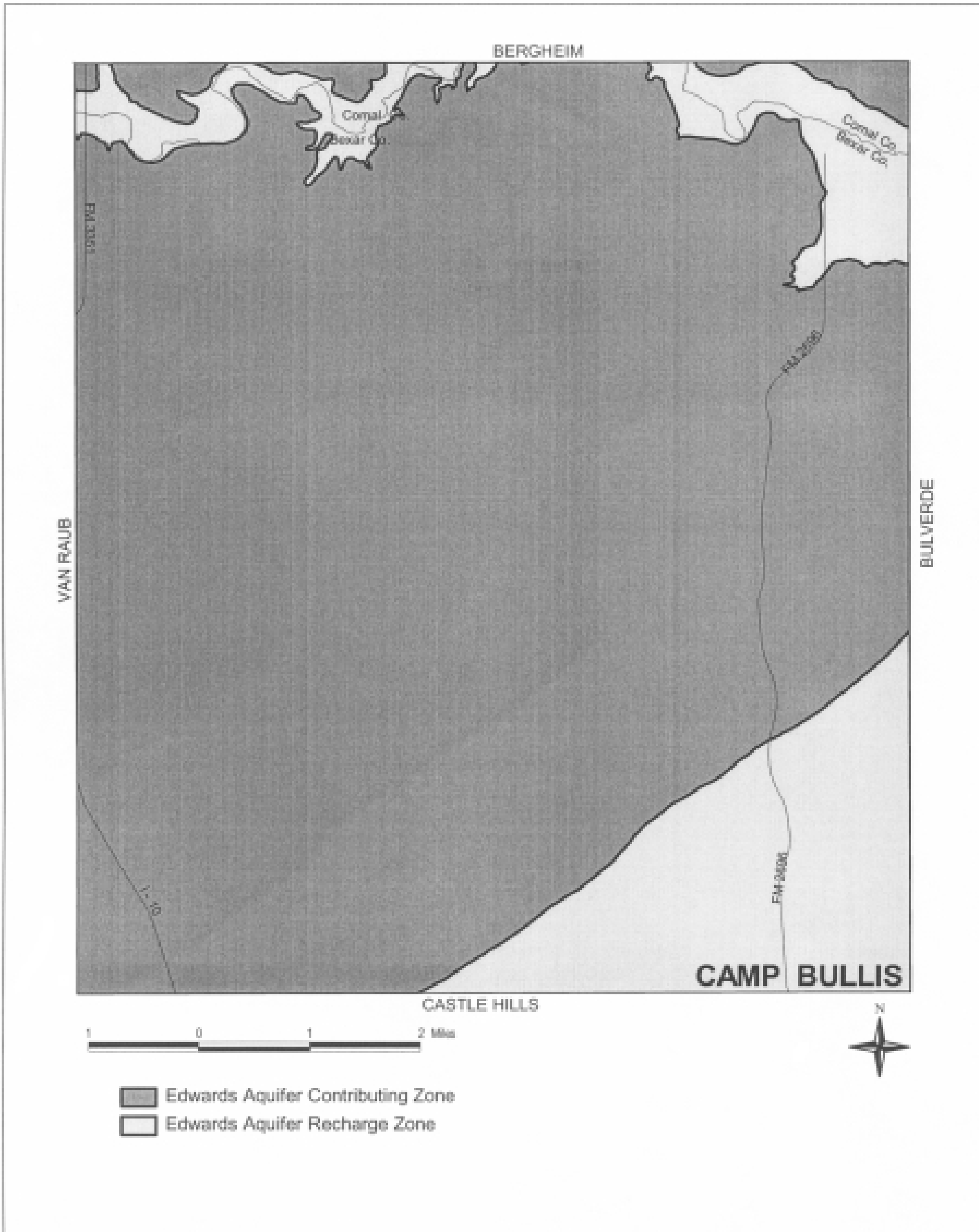
Appendix A24 - Areas Proposed for Change in Regulatory Designations within the Bat Cave 7.5 Minute Quadrangle, Bexar and Comal Counties.



Appendix A25 - Regulatory Zones Incorporating Proposed Changes within the Bat Cave 7.5 Minute Quadrangle, Bexar and Comal Counties.



Appendix A26 - Areas Proposed for Change in Regulatory Designations within the Camp Bullis 7.5 Minute Quadrangle, Bexar and Comal Counties.



Appendix A27 - Regulatory Zones Incorporating Proposed Changes within the Camp Bullis 7.5 Minute Quadrangle, Bexar and Comal Counties.

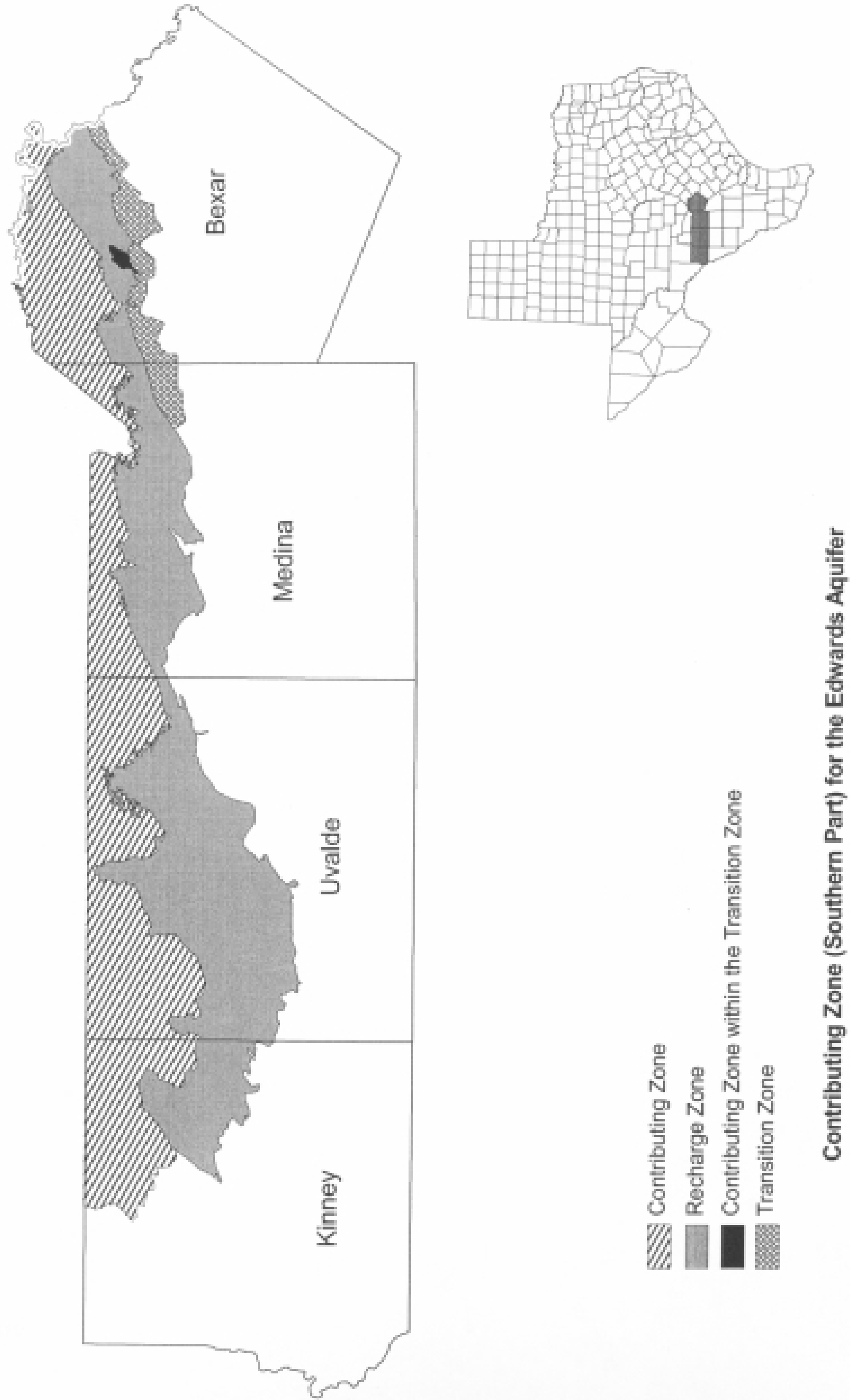


Figure 1: 30 TAC §213.22(2)

Figure 2: 30 TAC §213.22(2)
Williamson
Travis
Hays
Comal
Contributing Zone
Recharge Zone
Contributing Zone within the Transition Zone
Transition Zone
Contributing Zone (Northern Part) for the Edwards Aquifer

Figure: 43 TAC §21.40(f)(1)(A)

Minimum Depth of Cover by Voltage

Voltage	Minimum Depth of Cover
22,000 or less	30 inches
22,001 to 40,000	36 inches
40,001 and greater	42 inches

Figure: 43 TAC §21.41(c)

Horizontal Clearances[1]					
Location	Functional Classification	Design Speed (mph)	Avg. Daily Traffic[2]	Horizontal Clearance Width (ft)[3,4,5] Minimum	Desirable
Rural	Freeways	All	All	30	
Rural	Arterial	All	0 - 750 750 - 1500 >1500	10 16 30	16 30 -
Rural	Collector	≥50 ≤45	All All	Use above rural arterial criteria. 10	 -
Rural	Local	All	All	10	-
Suburban	All	All	<8,000	10[6]	10[6]
Suburban	All	All	8,000 - 12,000	10[6]	20[6]
Suburban	All	All	12,000 - 16,000	10[6]	25[6]
Suburban	All	All	>16,000	20[6]	30[6]
Urban	Freeways	All	All	30	
Urban	All (curbed)	≥50	All	Use above suburban criteria insofar as available border width permits.	
Urban	All (curbed)	≤45	All	1.5 from curb face	3.0
Urban	All (uncurbed)	≥50	All	Use above suburban criteria.	
Urban	All (uncurbed)	≤45	All	10	-

[1] Because of the need for specific placement to assist traffic operations, devices such as traffic signal supports, railroad signal/warning device supports, and controller cabinets are excluded from horizontal clearance requirements, but must be located outside of the prescribed horizontal clearances or protected by a barrier.

[2] Average ADT over project life, i.e., 0.5 (present ADT and future ADT). Use total ADT on two-way highways and directional ADT on one-way highways.

[3] Without barrier or other safety treatment of appurtenances.

[4] Measured from edge of travel lane for all cut sections and for all fill sections where side slopes are 6:1 or flatter. Where fill slopes are steeper then 6:1, it is desirable to provide a hazard-free area beyond the toe of slope.

[5] Desirable, rather than minimum, values should be used where feasible.

[6] Purchase of 5 feet or less of additional right of way strictly for satisfying horizontal clearance provisions is not required.

[7] 16 feet for ramps.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Contract Award

This publication is filed pursuant to Texas Government Code, Section 2254.030. The Request for Proposal was published in the December 10, 2004 issue of the *Texas Register* (29 TexReg 11471).

DESCRIPTION OF ACTIVITIES OF PRIVATE CONSULTANT:

The Office of the Attorney General of Texas (the "OAG") has entered into a major consulting services contract for the following services:

The OAG administers millions of dollars of federal funds for the Child Support (Title IV-D) and Medicaid (Title XIX) programs. The OAG recoups its indirect costs from these federal programs based on rates approved by the United States Department of Health and Human Services ("HHS"). Contractor will review the indirect cost methodologies of the OAG to determine areas of cost recovery which will maximize revenue from the recovery of indirect costs and will develop indirect cost rates throughout the OAG, as appropriate. Contractor will prepare Indirect Cost Allocation Plans for FY04 (based on actual expenditures) and for FY06 (based on budgeted expenditures) in accordance with OMB Circular A-87, for submission to HHS for federal approval and will negotiate approval of those plans with HHS. Contractor will also analyze existing legal billing rates of the OAG for purposes of reconciling those existing rates with actual costs of the OAG in providing the legal services and will provide to the OAG a report of that reconciliation. Contractor will develop the FY06 billing rates for legal services. Contractor will negotiate with HHS for approval of the FY06 billing rates. Finally, Contractor will provide guidance to the OAG in the implementation of these plans and billing rates.

NAME AND BUSINESS ADDRESS OF PRIVATE CONSULTANT:

The private consultant engaged by the OAG for these activities is Maximus, Inc., whose business address is 13601 Preston Road, Suite 201E, Dallas, TX 75240.

TOTAL VALUE AND TERM OF THE CONTRACT:

The total value of the contract is $49,000. The term of the contract began on February 22, 2005, and will terminate on August 31, 2005, unless federal approval is still pending for the plans. In such case, the contract will continue until August 31, 2006 for the sole purpose of obtaining the necessary federal approval.

DATES ON WHICH REPORTS ARE DUE:

The Indirect Cost Allocation Plans must be submitted to HHS no later than April 29, 2005. The final report regarding the FY06 billing rates for legal services must be submitted to the OAG no later than August 31, 2005.

For information regarding this publication you may contact A.G. Younger, Agency Liaison, at 512-463-2110.

TRD-200500920
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: March 1, 2005

Texas Health and Safety Code, Texas Water Code and Texas Clean Air Act

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code. Before the State may settle a judicial enforcement action under the Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: *State of Texas v. Texsand Silica Management, Inc. and Texsand Silica, LTD*; Cause No. GV402020; in the 250th Judicial District Court, Travis County, Texas

Nature of Defendant's Operations: Texsand owns and operates a sand mining facility that excavates, washes, and screens sand located at 3549 Monroe Highway, Granbury, Hood County, Texas. During a May, 2004 investigation, The TCEQ determined that Texsand violated Texas Water Code by failing to obtain authorization to discharge process water associated with an industrial activity into water in the state. In addition, Texsand violated the TPDES General Permit No. TXR050000 by failing to provide a narrative description of all activities, failing to conduct periodic and quarterly visual inspections, and failing to note the estimated volume of sediment removed. Texsand corrected the violations.

Proposed Agreed Judgment: The Agreed Final Judgment and Permanent Injunction required Texsand to pay the civil penalties in the amount of Seven Thousand Five Hundred Dollars ($7,500.00), and attorney's fees in the amount of Three Thousand Six Hundred Dollars ($3,600.00).

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment and Permanent Injunction should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to Anthony W. Benedict, Assistant Attorney General, Office of the Texas Attorney General, P. O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication you may contact A.G. Younger, Agency Liaison at 512-463-2110.

TRD-200500915
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: March 1, 2005

Texas Building and Procurement Commission

Request for Proposal

RFP Number: #303-5-10780

Opening Date/Time: March 25, 2005 at 3:00 PM

Description: Lease requirement for approximately 1,871 sq. ft. of Office Space in the City of Webster or League City, Harris County, Texas

Agency: Texas Commission on Environmental Quality (TCEQ)

Purchaser/Contact: Kenneth Ming (512) 463-2743 or through the Electronic State Business Daily at: http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=57780

TRD-200500864
Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Filed: February 25, 2005

Request for Proposal

RFP Number: #303-5-10772

Opening Date/Time: March 15, 2005 at 3:00 PM

Description: Lease requirement for approximately 7,800 sq. ft. of Office Space in the City of Houston, Harris County, Texas

Agency: Texas Department of Criminal Justice (TDCJ)

Purchaser/Contact: Kenneth Ming (512) 463-2743 or through the Electronic State Business Daily at: http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=57701

TRD-200500865
Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Filed: February 22, 2005

Request for Proposal

RFP Number: #303-5-10767

Opening Date/Time: March 18, 2005 at 3:00 PM

Description: Lease of Office/Storage space for Texas Commission on Environmental Quality for approximately 4,955 sq. ft. of Office Space and 900 sq. ft. Boat Storage space. Lubbock, Lubbock County, Texas

Agency: Texas Commission on Environmental Quality

Purchaser/Contact: Kenneth Ming (512) 463-2743 or through the Electronic State Business Daily at:

http://esbd.tbpc.state.tx.us/1380/bid show.cfm?bidid=57760

TRD-200500892
Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Filed: February 28, 2005

Comptroller of Public Accounts

Notice of Request for Proposals

Pursuant to Chapter 403, §403.011; Chapter 2155, §2155.001, Subsection 2; Chapter 2156, §2156.121; and Chapter 404, Subchapters C and G, §§404.102 - 404.106, Texas Government Code, the Comptroller of Public Accounts (Comptroller), on behalf of the Texas Treasury Safekeeping Trust Company (TTSTC or Trust Company), announces the issuance of its Request for Proposals (RFP #171b) for Private Equity Fund of Funds Investment Management and related services for the Trust Company. The Comptroller requests proposals from qualified entities to provide Private Equity Fund of Funds Investment Management and related services to the Trust Company. The Comptroller and the Trust Company reserve the right to award more than one contract under this RFP. The successful respondent(s) will be expected to begin performance of the contract on or about June 30, 2005.

Contact: Parties interested in submitting a proposal should contact Mary Salluce, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., Room G-24, Austin, Texas 78774, (512) 305-8673, to obtain a complete copy of the RFP. The Comptroller will mail copies of the RFP only to those parties specifically requesting a copy. The RFP will be available for pick-up at the above referenced address on Friday, March 11, 2005, between 2:00 p.m. and 5:00 p.m. Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller will also make the entire RFP available electronically on the Texas Marketplace after Friday, March 11, 2005, 2:00 p.m. CZT. The website address is http://esbd.tbpc.state.tx.us.

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and Non-mandatory Letters of Intent to propose must be received at the above-referenced address not later than 2:00 p.m. (CZT) on Friday, March 25, 2005. Prospective respondents are encouraged to fax non-mandatory Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. The Letter of Intent must be addressed to Mary Salluce, Assistant General Counsel, Contracts, and must contain the information as stated in the corresponding Section of the RFP and be signed by an official of that entity. Questions received after this time and date will not be considered. On or before Wednesday, March 30, 2005, the Comptroller expects to post responses to questions as a revision to the Texas Marketplace notice on the issuance of this RFP.

Closing Date: Proposals must be delivered to the Office of the Deputy General Counsel for Contracts, at the location specified above (ROOM G-24) no later than 2:00 p.m. (CZT), on April 12, 2005. Proposals received in ROOM G24 after this time and date will not be considered regardless of the reason for the late delivery and receipt. Respondents are encouraged to and solely responsible for verifying timely receipt of proposals in that office (ROOM G24).

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Trust Company shall make the final decision on any contract award or awards resulting from this RFP.

The Trust Company and the Comptroller reserve the right, in their sole discretion, to accept or reject any or all proposals submitted. Neither the Trust Company nor the Comptroller are under any obligation to execute any contracts on the basis of this notice or the distribution of any RFP. Neither the Trust Company nor the Comptroller shall pay for any costs incurred by any entity in responding to this notice or the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows:

Issuance of RFP--March 11, 2005, 2:00 p.m. CZT;

Non-Mandatory Letter of Intent to propose and Questions Due--March 25, 2005, 2:00 p.m. CZT;

Official Responses to Questions posted--March 30, 2005;

Proposals Due--April 12, 2005, 2:00 p.m. CZT;

Contract Execution--June 15, 2005, or as soon thereafter as practical;

Commencement of Project Activities--June 30, 2005.

TRD-200500917
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: March 1, 2005

Notice of Request for Proposals

Pursuant to §1201.027, Texas Government Code; Chapter 2254, Subchapter B, Texas Government Code; and Chapter 404, Subchapter H, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces its Request for Proposals (RFP #172a) from qualified, independent firms to serve as Financial Advisor to the Comptroller. The Comptroller desires to obtain the services of a Financial Advisor related to the document preparation, issuance, sale, and delivery of Tax and Revenue Anticipation Notes, including Commercial Paper Notes (Notes) as well as assistance in handling of disclosure issues relating to the Notes. The successful respondent will be expected to begin performance of the contract on or about May 2, 2005.

Contact: Parties interested in submitting a proposal should contact Thomas H. Hill, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., RM G-24, Austin, Texas, 78774, telephone number: (512) 305-8673, to obtain a copy of the RFP. The Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP will be available for pick-up at the above-referenced address on March 14, 2005, between 2:00 p.m. and 5:00 p.m., Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller will also make the RFP available electronically on the Texas Marketplace after Monday, March 14, 2005, 2:00 p.m. (CZT).

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and non-mandatory Letters of Intent to propose must be received at the above-referenced address not later than 2:00 p.m. (CZT) on Monday, March 28, 2005. Prospective respondents are encouraged to fax non-mandatory Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. The Letter of Intent must be addressed to Thomas H. Hill, Assistant General Counsel, Contracts, and must contain the information as stated in the corresponding Section of the RFP and be signed by an official of that entity. Non-mandatory Letters of Intent and Questions received after this time and date will not be considered. On or about Wednesday, March 30, 2005, the Comptroller expects to post responses to questions as a revision to the Texas Marketplace notice on the issuance of this RFP.

Closing Date: Proposals must be delivered to the Office of the Assistant General Counsel, Contracts, at the location specified above (ROOM G24) no later than 2:00 p.m. (CZT), on Thursday, April 7, 2005. Proposals received in ROOM G24 after this time and date will not be considered regardless of the reason for the late delivery and receipt. Respondents are encouraged to verify and are solely responsible for verifying timely receipt of proposals in that office (ROOM G24).

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Comptroller shall make the final decision on any contract award or awards resulting from this RFP.

The Comptroller reserves the right, in its sole discretion, to accept or reject any or all proposals submitted. The Comptroller is not obligated to award or execute any contracts on the basis of this notice or the distribution of any RFP. The Comptroller shall not pay for any costs incurred by any entity in responding to this notice or the RFP.

The anticipated schedule of events is as follows:

Issuance of RFP--March 14, 2005, 2:00 p.m. CZT;

Non-Mandatory Letter of Intent to propose and Questions Due--March 28, 2005, 2:00 p.m. CZT;

Official Responses to Questions posted--March 30, 2005, or as soon thereafter as practical;

Proposals Due--April 7, 2005, 2:00 p.m. CZT;

Contract Execution--April 29, 2005, or as soon thereafter as practical;

Commencement of Project Activities--May 2, 2005.

TRD-200500918
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: March 1, 2005

Notice of Request for Proposals

Pursuant to §1201.027, Texas Government Code; Chapter 2254, Subchapter A, Texas Government Code; and Chapter 404, Subchapter H, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces its Request for Proposals (RFP 172b) from qualified, independent law firms to serve as Bond Counsel to the Comptroller. The Comptroller desires to obtain the services of Bond Counsel in connection with a variety of issues related to the issuance, sale, and delivery of Tax and Revenue Anticipation Notes, including Commercial Paper Notes (Notes) as well as assisting in handling all disclosure issues relating to the Notes. The successful respondent will be expected to begin performance of the contract on or about May 2, 2005.

Contact: Parties interested in submitting a proposal should contact Thomas H. Hill, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., RM G-24, Austin, Texas, 78774, telephone number: (512) 305-8673, to obtain a copy of the RFP. The Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP will be available for pick-up at the above-referenced address on March 14, 2005, between 2:00 p.m. and 5:00 p.m., Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller will also make the RFP available electronically on the Texas Marketplace after Monday, March 14, 2005, 2:00 p.m. (CZT).

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and non-mandatory Letters of Intent to propose must be received at the above-referenced address not later than 2:00 p.m. (CZT) on Monday, March 28, 2005. Prospective respondents are encouraged to fax non-mandatory Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. The Letter of Intent must be addressed to Thomas H. Hill, Assistant General Counsel, Contracts, and must contain the information as stated in the corresponding Section of the RFP and be signed by an official of that entity. Non-mandatory Letters of Intent and Questions received after this time and date will not be considered. On or about Wednesday, March 30, 2005, the Comptroller expects to post responses to questions as a revision to the Texas Marketplace notice on the issuance of this RFP.

Closing Date: Proposals must be delivered to the Office of the Assistant General Counsel, Contracts, at the location specified above (ROOM

G24) no later than 2:00 p.m. (CZT), on Thursday, April 7, 2005. Proposals received in ROOM G24 after this time and date will not be considered regardless of the reason for the late delivery and receipt. Respondents are encouraged to and solely responsible for verifying timely receipt of proposals in that office (ROOM G24).

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Comptroller shall make the final decision on any contract award or awards resulting from this RFP.

The Comptroller reserves the right, in its sole discretion, to accept or reject any or all proposals submitted. The Comptroller is not obligated to award or execute any contracts on the basis of this notice or the distribution of any RFP. The Comptroller shall not pay for any costs incurred by any entity in responding to this notice or the RFP.

The anticipated schedule of events is as follows:

Issuance of RFP--March 14, 2005, 2:00 p.m. CZT;

Non-Mandatory Letter of Intent to propose and Questions Due--March 28, 2005, 2:00 p.m. CZT;

Official Responses to Questions posted--March 30, 2005, or as soon thereafter as practical;

Proposals Due--April 7, 2005, 2:00 p.m. CZT;

Contract Execution--April 29, 2005, or as soon thereafter as practical;

Commencement of Project Activities--May 2, 2005.

TRD-200500919
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: March 1, 2005

♦ ♦ ♦

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, 303.008, 303.009, 304.003, and 346.101 of the Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of March 7, 2005 - March 13, 2005 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of March 7, 2005 - March 13, 2005 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005 and §303.009[3] for the period of March 1, 2005 - March 31, 2005 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The monthly ceiling as prescribed by §303.005 and §303.009 for the period of March 1, 2005 - March 31, 2005 is 18% for Commercial over $250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of April 1, 2005 - June 30, 2005 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of April 1, 2005 - June 30, 2005 is 18% for Commercial over $250,000.

The retail credit card quarterly rate as prescribed by §303.009[1] for the period of April 1, 2005 - June 30, 2005 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The lender credit card quarterly rate as prescribed by §346.101 of the Texas Finance Code[1] for the period of April 1, 2005 - June 30, 2005 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The standard annual rate as prescribed by §303.008 and §303.009[4] for the period of April 1, 2005 - June 30, 2005 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The standard annual rate as prescribed by §303.008 and §303.009 for the period of April 1, 2005 - June 30, 2005 is 18% for Commercial over $250,000.

The retail credit card annual rate as prescribed by §303.009[1] for the period of April 1, 2005 - June 30, 2005 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The judgment ceiling as prescribed by §304.003 for the period of March 1, 2005 - March 31, 2005 is 5.50% for Consumer/Agricultural/Commercial/credit thru $250,000.

The judgment ceiling as prescribed §304.003 for the period of March 1, 2005 - March 31, 2005 is 5.50% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

[3] For variable rate commercial transactions only.

[4] Only for open-end credit as defined in §301.002(14) of the Texas Finance Code.

TRD-200500893
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: March 1, 2005

♦ ♦ ♦

Texas Education Agency

Notice of the Grant Writer Designation Form for Even Start Family Literacy Program eGrant Application

As part of the Texas Education Agency (TEA) eGrants system, the Grant Writer Designation Form has been introduced as a mechanism for identifying users who will have access to view and complete the Even Start Family Literacy grant applications. Due to the competitive nature of some grants, certain users will be designated to have access to a campus or site grant application by the superintendent or the organization's authorized official. Only the superintendent or the organization's authorized official may complete the form and must denote agreement with the authorization statement on the bottom of the form before the schedule is complete. The form must be submitted in order for designated individuals to gain access to the grant application. The information submitted on the form is considered to be binding. Only the users identified on the form will have access to the grant application.

Superintendents or the organization's authorized official and eGrants TEA Security Environment (TEASE) users can view the instructions for the form at http://maverick.tea.state.tx.us:8080/Guidelines/Template%20Forms/TEMPAA05PP2220_I.pdf.

Any users who have previously applied for an eGrants TEASE username and password do not need to reapply. However, users are encouraged to review the role previously requested for their eGrants username

and password to ensure it is appropriate. If the role is not correct, users will need to submit a new eGrants/expenditure report (ER) TEASE access request form indicating the change in role. If a username and password were assigned to an individual who should no longer have access, please complete the eGrants/ER TEASE access form to delete system access for that individual.

A TEASE username and password are required for each user of eGrants, including authorized officials such as superintendents and executive directors who submit grant applications, employees or contractors who will assist in writing/completing applications in eGrants, grant personnel who will be completing project progress reports in eGrants, and business office personnel who will be entering and/or certifying and submitting expenditure reports and requesting payment for various eGrants. For each user, a single TEASE username and password is valid for all grant expenditure reporting and all eGrants applications and is not limited to any one specific grant. Privileges listed under a role apply to all grants, progress/results reports, and expenditure reports.

To request a username and password, go to http://www.tea.state.tx.us/forms/tease/egrants_ext.htm. Information on how to apply for eGrants and ER access can be found at http://www.tea.state.tx.us/opge/egrant/.

TRD-200500936
Cristina De La Fuente-Valadez
Director, Policy Coordination Division
Texas Education Agency
Filed: March 2, 2005

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Texas Commission on Environmental Quality

Enforcement Orders

A default order was entered regarding DBW Enterprises, Ltd. dba Scotty Mint Grocery, Docket No. 2003-0259-PST-E on 02/15/2005 assessing $6,300 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barbara Klein, Staff Attorney at 512/239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E. I. Du Pont de Nemours and Company, Docket No. 2002-1118-IWD-E on 02/15/2005 assessing $17,300 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lindsay Andrus, Staff Attorney at 512/239-4761, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Albert E. Ellis dba Houston Land Designers, Docket No. 2003-1553-LII-E on 02/15/2005 assessing $250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Deborah Bynum, Staff Attorney at 512/239-1976, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mohammad N. Qureshi dba Hah Gas Mart, Docket No. 2003-0855-PST-E on 02/15/2005 assessing $3,870 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barbara Watson, Staff Attorney at 512/239-2044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Garland, Docket No. 2002-1353-AIR-E on 02/15/2005 assessing $4,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Wendy Cooper, Staff Attorney at 817/588-5867, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Laredo, Docket No. 2003-1285-MWD-E on 02/15/2005 assessing $6,550 in administrative penalties with $1,310 deferred.

Information concerning any aspect of this order may be obtained by contacting Brian Lehmkuhle, Enforcement Coordinator at 512/239-4482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Antonio Garcia dba Garcia Junk Yard, Docket No. 2003-1476-MSW-E on 02/15/2005 assessing $2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lindsay Andrus, Staff Attorney at 512/239-4761, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Atofina Petrochemicals, Inc., Docket No. 2004-0065-AIR-E on 02/15/2005 assessing $27,020 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at 512/239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dominion Exploration & Production, Inc., Docket No. 2003-1324-AIR-E on 02/15/2005 assessing $750 in administrative penalties with $150 deferred.

Information concerning any aspect of this order may be obtained by contacting Brent Hurta, Enforcement Coordinator at 512/239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Inayat Enterprises, Inc. dba Mini Max Food Mart, Docket No. 2003-1005-PST-E on 02/15/2005 assessing $5,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Wendy Cooper, Staff Attorney at 817/588-5867, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sharon Washington dba S & J Tire Service, Docket No. 2003-1539-MSW-E on 02/15/2005 assessing $5,500 in administrative penalties with $1,100 deferred.

Information concerning any aspect of this order may be obtained by contacting Carolyn Lind, Enforcement Coordinator at 903/535-5145, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Babaji & Company, Inc. dba Phillips 66, Docket No. 2004-0174-PST-E on 02/15/2005 assessing $3,750 in administrative penalties with $750 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at 361/825-3126,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nizamani, Inc. dba Delta Food Store, Docket No. 2004-0208-PST-E on 02/15/2005 assessing $3,850 in administrative penalties with $770 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at 817/588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exxon Mobil Corporation, Docket No. 2004-0296-AIR-E on 02/15/2005 assessing $11,325 in administrative penalties with $2,265 deferred.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at 512/239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Car Spa, Inc. dba Car Spa Car Wash, Docket No. 2004-0343-PST-E on 02/15/2005 assessing $7,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at 817/588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Munisha, Inc. dba Grab all Drive In Grocery, Docket No. 2004-0406-PWS-E on 02/15/2005 assessing $350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ashley Kever, Staff Attorney at 512/239-2987, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Enbridge Pipelines Texas Gathering, Inc., Docket No. 2004-0413-AIR-E on 02/15/2005 assessing $6,350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Richard Croston, Enforcement Coordinator at 512/239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron U.S.A., Inc. dba Chevron Products Company, Docket No. 2004-0425-IWD-E on 02/15/2005 assessing $6,880 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at 512/239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Enbridge Pipelines (East Texas), LP, Docket No. 2004-0439-AIR-E on 02/15/2005 assessing $2,425 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at 512/239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Equistar Chemicals, LP, Docket No. 2004-0458-AIR-E on 02/15/2005 assessing $13,090 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Edward Moderow, Enforcement Coordinator at 512/239-2680, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Water Association of North Lake, Inc., Docket No. 2004-0464-PWS-E on 02/15/2005 assessing $2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at 713/767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dalton Oil, Inc., Docket No. 2004-0493-PST-E on 02/15/2005 assessing $1,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Brent Hurta, Enforcement Coordinator at 512/239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Signature Stores, Inc. dba One Stop Fina, Docket No. 2004-0514-PST-E on 02/15/2005 assessing $3,510 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at 512/239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Caney Creek Haven Club Civic Committee, Inc. dba Caney Creek Haven Club Water System, Docket No. 2004-0516-PWS-E on 02/15/2005 assessing $1,523 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at 713/422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Red Star Truck Terminal, Inc. dba Texaco Gas and Go 3, Docket No. 2004-0575-PST-E on 02/15/2005 assessing $3,850 in administrative penalties with $770 deferred.

Information concerning any aspect of this order may be obtained by contacting Susan Longenecker, Enforcement Coordinator at 512/239-0968, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ZSA Investment, Inc. dba J's Shoppers Mart, Docket No. 2004-0588-PST-E on 02/15/2005 assessing $4,950 in administrative penalties with $990 deferred.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at 512/239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Clean Harbors Deer Park, LP, Docket No. 2004-0621-IHW-E on 02/15/2005 assessing $12,750 in administrative penalties with $2,550 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at 512/239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pay and Save, Inc., Docket No. 2004-0693-PST-E on 02/15/2005 assessing $10,000 in administrative penalties with $2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Brian Lehmkuhle, Enforcement Coordinator at 512/239-4482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Masters Resources, LLC, Docket No. 2004-0701-AIR-E on 02/15/2005 assessing $8,000 in administrative penalties with $1,600 deferred.

Information concerning any aspect of this order may be obtained by contacting Lori Thompson, Enforcement Coordinator at 903/535-5116, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Town of Prosper, Docket No. 2004-0749-MWD-E on 02/15/2005 assessing $3,420 in administrative penalties with $684 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at 512/239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Thomas Newman dba T J & N Water Utility dba Cedar Oaks Mobile Home Community and Homestead Oaks Mobile Home Community, Docket No. 2004-0750-PWS-E on 02/15/2005 assessing $2,416 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at 713/422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fleetpride, Inc., Docket No. 2004-0761-MLM-E on 02/15/2005 assessing $1,150 in administrative penalties with $230 deferred.

Information concerning any aspect of this order may be obtained by contacting Chad Blevins, Enforcement Coordinator at 512/239-6017, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Holder Management and Construction, Inc., Docket No. 2004-0778-SLG-E on 02/15/2005 assessing $3,500 in administrative penalties with $700 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at 512/239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bissonnet Municipal Utility District, Docket No. 2004-0804-MWD-E on 02/15/2005 assessing $1,900 in administrative penalties with $380 deferred.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at 512/239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cooper Cameron Corporation, Docket No. 2004-0920-MWD-E on 02/15/2005 assessing $3,580 in administrative penalties with $716 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Reed, Enforcement Coordinator at 432/620-6132, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fort Gates WSC, Docket No. 2004-0925-PWS-E on 02/15/2005 assessing $2,650 in administrative penalties with $530 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at 512/239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Three Rivers, Docket No. 2004-0933-PWS-E on 02/15/2005 assessing $250 in administrative penalties with $50 deferred.

Information concerning any aspect of this order may be obtained by contacting Edward Moderow, Enforcement Coordinator at 512/239-2680, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding D & D Investments Partners, LP, Docket No. 2004-0936-SLG-E on 02/15/2005 assessing $1,950 in administrative penalties with $390 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at 713/767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Son & Chi Corporation dba Buckingham Chevron, Docket No. 2004-0943-PST-E on 02/15/2005 assessing $5,000 in administrative penalties with $1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Kent Heath, Enforcement Coordinator at 512/239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Yoon K. Suh and Gregory T. Adams dba Griffis Corner, Docket No. 2004-1042-PST-E on 02/15/2005 assessing $16,500 in administrative penalties with $3,300 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at 512/239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Collinsworth & Watson, Inc., Docket No. 2004-1053-PST-E on 02/15/2005 assessing $3,750 in administrative penalties with $750 deferred.

Information concerning any aspect of this order may be obtained by contacting Brent Hurta, Enforcement Coordinator at 512/239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mass Marketing, Ltd. dba Super S Foods 327, Docket No. 2004-1107-PST-E on 02/15/2005 assessing $4,500 in administrative penalties with $900 deferred.

Information concerning any aspect of this order may be obtained by contacting Kent Heath, Enforcement Coordinator at 512/239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200500905
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 1, 2005

Notice of District Petition

Notices mailed February 23 through March 1, 2005

TCEQ Internal Control No. 02022005-D03; LMV Management Co., Ltd. (Petitioner) filed a petition for creation of Montgomery County Municipal Utility District No. 105 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 607.323 acres located within Montgomery County, Texas; and (4) no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any city, town or village in Texas. The petition further states that the proposed District will: (1) purchase, construct, acquire, improve, extend, maintain, and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) purchase, construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; and (3) control, abate and amend local storm waters or other harmful excesses of water, as more particularly described in an engineer's report filed simultaneously with the filing of the petition; and (4) construct, acquire, improve, maintain, and operate additional facilities, systems, plants, and enterprises consistent with the purposes for which the District is created and permitted under State law. According to the petition, the Petitioners have conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately $53,000,000.

TCEQ Internal Control No. 01182005-D02; Beazer Homes Texas, L.P. (Petitioner) filed a petition for creation of Harris County Municipal Utility District No. 420 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 99.22 acres located within Harris County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas, and is not within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 2004-900, effective September 7, 2004, the City of Houston, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain, and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; and (3) control, abate and amend local storm waters or other harmful excesses of water, as more particularly described in an engineer's report filed simultaneously with the filing of the petition; and (4) purchase, construct, acquire, improve, maintain, and operate additional facilities, systems, plants, and enterprises consistent with the purposes for which the District is created and permitted under State law. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately $7,500,000.

TCEQ Internal Control No. 11012004-D02; Wellington Trace, Ltd.(Petitioner) filed a petition for creation of Oak Point Water Control and Improvement District No. 2 of Denton County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 51 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there are four lienholders, Alan Michlin, Pavillion Bank, Strittmatter Irrigation and Point Bank, on the property to be included in the proposed District and by affidavit they have all consented to the petition; (3) the proposed District will contain approximately 55.684 acres located within Denton County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction and the corporate limits of the City of Oak Point, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. 2003-08, effective February 3, 2003, the City of Oak Point, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) construct, maintain, and operate a waterworks and sanitary sewer system for residential, industrial and commercial purposes; (2) control, abate and amend local storm waters or other harmful excesses of water, as more particularly described in an engineer's report filed simultaneously with the filing of the petition; and (3) construct, acquire, improve, maintain, and operate additional facilities, systems, plants, and enterprises consistent with the purposes for which the District is created and permitted under State law. According to the petition, the Petitioners have conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately $2,150,000.

TCEQ Internal Control No. 12032004-D01; Terrabrook Cinco Ranch Southwest, L.P. (Petitioner) filed a petition for creation of Cinco Southwest Municipal Utility District No. 2 of Fort Bend County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there are two lienholders, International Bank of Commerce and Gaston 1093, on the property to be included in the proposed District; (3) the proposed District will contain approximately 518.8 acres located within Fort Bend County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. The Petitioner has also provided the TCEQ with certificates evidencing the consent of International Bank of Commerce and Gaston 1093 to the creation of the proposed District. By Ordinance No. 2004-898, effective September 7, 2004, the City of Houston, Texas gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) design, construct, acquire, maintain and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; (3) control, abate and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, maintain, and operate additional facilities, systems, plants, and enterprises consistent with the purposes for which the District is created, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, the Petitioner has conducted a preliminary

investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately $47,320,000.

TCEQ Internal Control No. 01312005-D03; PNE Development, Ltd. (Petitioner) filed a petition for creation of Harris County Municipal Utility District No. 412 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the land to be included in the proposed District; (3) the proposed District will contain approximately 440.60 acres located within Harris County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction and the corporate limits of the City of Houston, Texas, and is not within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 2005-7, effective January 11, 2005, the City of Houston, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain, and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; and (3) control, abate and amend local storm waters or other harmful excesses of water, as more particularly described in an engineer's report filed simultaneously with the filing of the petition; and (4) purchase, construct, acquire, improve, maintain, and operate additional facilities, systems, plants, and enterprises consistent with the purposes for which the District is created and permitted under State law. The submitted creation application also requests approval of a fire protection plan for the proposed District. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately $27,300,000.

TCEQ Internal Control No. 11012004-D20; Roman Forest Consolidated Municipal Utility District of Montgomery County has applied to the Texas Commission on Environmental Quality (TCEQ) for authority to adopt and impose an annual uniform operations and maintenance standby fee up to $216.00 per equivalent single family connection (ESFC) per year for calendar years 2004-2006, on unimproved property within the District. The application was filed pursuant to Chapter 49 of the Texas Water Code, 30 Texas Administrative Code Chapter 293, and under the procedural rules of the TCEQ. The Commission may approve the annual standby fees as requested, or it may approve a lower annual standby fee, but it shall not approve an annual standby fee greater than the amount requested. The standby fee is a personal obligation of the person owning the undeveloped property on January 1 of the year for which the fee is assessed. A person is not relieved of his pro-rated share of the standby fee obligation on transfer of title to the property. On January 1 of each year, a lien is attached to the undeveloped property to secure payment of any standby fee imposed and the interest or penalty, if any, on the fee. The lien has the same priority as a lien for taxes of the District. The purpose of standby fees is to distribute a fair portion of the cost burden for operations and maintenance costs and debt service of the District facilities to owners of property who have not constructed vertical improvements but have water, wastewater or drainage facilities or services available. Any revenues collected from the operations and maintenance standby fees shall be used to supplement the District's operations and maintenance account.

INFORMATION SECTION

The TCEQ may grant a contested case hearing on a petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve a petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance, at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200500906
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 1, 2005

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Notice of Public Hearing by the Texas Commission on Environmental Quality on Proposed Revisions to 30 TAC Chapter 213

The Texas Commission on Environmental Quality will conduct a public hearing to receive testimony concerning revisions to 30 TAC Chapter 213, concerning Edwards Aquifer, §§213.1, 213.3, 213.4, 213.12, 213.20 -213.22, 213.24, and 213.27, under the requirements of Texas Health and Safety Code, §382.017 and Texas Government Code, Subchapter B, Chapter 2001.

The proposed amendments would modify the existing boundaries of the Edwards Aquifer regulatory zones on the official maps that are incorporated by reference in Chapter 213. The Chapter 213 requirements regarding regulated activities in the recharge zone and in the contributing zone within the transition zone would apply in any areas added to these regulatory zones on the official maps. The proposed amendments will correct inaccurate rule citations; specify locations where official maps identifying the Edwards Aquifer recharge, contributing, and transition zones are maintained; rephrase for readability; and correct the agency's name. Wastewater discharge provisions are proposed to be extended to areas designated as contributing zone within the transition zone.

A public hearing on this proposal will be held in Austin on April 6, 2005 at 10:00 a.m. at the Texas Commission on Environmental Quality in Building F, Room 2210, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when

called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact Joyce Spencer, Office of Legal Services, at (512) 239-5017. Requests should be made as far in advance as possible.

Comments may be submitted to Joyce Spencer, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or by fax to (512) 239-4808. All comments should reference Rule Project Number 2003-029-213-WT. Comments must be received by 5:00 p.m., April 25, 2005. For further information, please contact Steve Musick, Water Supply Division, (512) 239-5552.

TRD-200500858
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: February 24, 2005

Notice of Water Quality Applications

The following notices were issued during the period of February 24, 2005 through March 1, 2005.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

AKZO NOBEL CHEMICALS INC. AKZO - AKZO NOBEL POLYMER CHEMICAL LLC which operates the Akzo Nobel Chemicals Inc. - Pasadena Plant, a specialty organic chemicals manufacturing facility, has applied for a renewal and minor modification to TPDES Permit No. WQ0002182000 to discontinue coverage in this permit of the storm water discharges from adjacent properties which are no longer owned by Akzo Nobel Chemicals Inc. The current permit authorizes the discharge of storm water, firewater pond overflow, steam condensate, and evaporate spray water on an intermittent and flow variable basis via Outfall 001. The facility is located at 12900 Bay Park Road in the Bayport Industrial Park, approximately 3 miles west of Galveston Bay on Bay Park Road, one half mile south of Fairmont Parkway, in the City of Pasadena, Harris County, Texas

AQUA UTILITIES, INC. has applied for a renewal of TPDES Permit No. 13293-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 42,400 gallons per day. The facility is located approximately 4 miles southeast of the intersection of Interstate Highway 35 and Farm-to-Market Road 2001 and 5 miles north of the intersection of State Highway 21 and Farm-to-Market Road 272 in Hays County, Texas.

CYPRESS CREEK CROSSINGS, LTD. DBA THE CROSSINGS has applied for a renewal of Permit No. 14203-001, which authorizes the disposal of treated domestic wastewater at a flow not to exceed a daily average volume of 14,000 gallons per day via subsurface drip irrigation. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located along the north side of Farm-to-Market Road 2769 (Volente Road), approximately 0.5 mile northeast of the intersection of Ranch Road 2222 and Farm-to-Market 2769 in Travis County, Texas. The facility and disposal site are located in the drainage basin of Lake Travis in Segment No. 1404 of the Colorado River basin.

CITY OF DENTON has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014416001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. The facility is located approximately 1,200 feet east of Farm-to-Market Road 1428 and north of Hartlee Field Road in Denton County, Texas.

LOWER COLORADO RIVER AUTHORITY has applied for a renewal of TPDES Permit No. 11982-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located approximately 4,500 feet southeast of the intersection of Farm-to-Market Road 581 and U.S. Highway 190, west of Kirby Creek and south of the City of Lometa in Lampasas County, Texas.

CITY OF MARION has applied for a renewal of TPDES Permit No. 10048-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located approximately 1,400 feet west of Farm-to-Market Road 465 and 1,800 feet south of Farm-to-Market Road 78 in southwest Marion in Guadalupe County, Texas.

MARTIN REALTY & LAND, INC. has applied for a renewal of TPDES Permit No. WQ0012621001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located approximately two miles southeast of the intersection of Farm-to-Market Road 1485 and Farm-to-Market Road 2090 in the Country West Subdivision in Montgomery County, Texas.

TXU MINING COMPANY LP which operates the Twin Oak Lignite Mining Area, a lignite surface mine, has applied for a renewal of TPDES Permit No. WQ0002699000, which authorizes the discharge from retention ponds in the "active mining area" on an intermittent and flow variable basis via Outfalls 001, 002, and 003; the discharge from retention ponds in the "post-mining area" on an intermittent and flow variable basis via Outfalls 101, 102, and 103; and the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day via Outfall 004. The facility is located along Farm-to-Market Road 2293, approximately 6 miles southeast of the City of Bremond, Robertson and Limestone Counties, Texas.

Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE ISSUED DATE OF THIS NOTICE.

CITY OF PEARLAND has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) permit to eliminate Outfall 002. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,000,000 gallons per day. The existing permit also authorizes the disposal of treated domestic wastewater via irrigation of 18 acres. The facility is located approximately 0.25 mile east and 1 mile north of the intersection of County Road 101 (Bailey Road) and County Road 103 (Harkey Road) in the City of Pearland in Brazoria County, Texas.

TRD-200500908
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 1, 2005

Notice of Water Rights Application

Notices mailed February 25, and February 28, 2005.

APPLICATION NO. 4155A; The Brazos River Authority, P.O. Box 7555, Waco, Texas 76714-7555, applicant, seeks an amendment pursuant to 11.122, Texas Water Code, and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) 295.1, et seq. The applicant owns Water Use Permit No. 4146 (Application No. 4155), which authorizes the construction of a dam and reservoir (Lake Alan Henry) on the South Fork of the Double Mountain Fork of the Brazos River, tributary of the Brazos River, Brazos River Basin, and the impoundment therein of 115,937 acre-feet of water, which the applicant is authorized to use for nonconsumptive recreational purposes. The permit also authorizes the diversion from the reservoir and use of 35,000 acre-feet of water per year for municipal purposes at a maximum combined diversion rate of 69.6 cfs (31,200 gpm), and a maximum secondary use of 21,000 acre-feet of water per year (treated sewage effluent) out of the maximum 35,000 acre-feet of water per year for the irrigation of 10,000 acres in Lubbock and Lynn Counties. The applicant seeks to correct the coordinates for the authorized diversion point and to add a diversion segment that includes the entire shoreline of the Sam Wahl Recreation Area. The corrected coordinates for the authorized diversion point are Latitude 33.0628 N and Longitude 101.0483 W, also bearing S 27 W, 5,300 feet from the northwest corner of the Houston and Great Northern RR Co., Survey 55, Abstract No. 120, Kent County, and Abstract No. 810, Garza County. The requested diversion segment is on the north shore of Lake Alan Henry, and includes the entire shoreline of the Sam Wahl Recreation Area in Garza County. The western boundary of the diversion reach is located at Latitude 33.0458 N and Longitude 101.1186 W, also bearing S 67 W, 25,875 feet from the northwest corner of the same survey, and the eastern boundary is located at Latitude 33.0542 N and Longitude 101.0811 W, also bearing S 59.5 W, 14,583 feet from the northwest corner of the same survey. No changes to diversion amount or rate are requested. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application and fees were received on November 9, 2004, and additional information was received on November 18 and December 14, 2004. The application was declared to be administratively complete and accepted for filing with the Office of the Chief Clerk on January 7, 2005. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by March 11, 2005.

APPLICATION NO. 5865; Rayzor Ranch, L.P., 8401 North Central Expressway, Suite 350, Dallas, Texas, 75225, applicant, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Water Use Permit pursuant to 11.143, Texas Water Code, and TCEQ Rules 30 Texas Administrative Code (TAC) 295.1, et seq. Applicant seeks authorization to modify and maintain an existing, exempt, on-channel dam and reservoir with a maximum capacity of 17.2 acre-feet of water and a surface area of 3.7 acres on an unnamed tributary of Loving Branch, tributary of Hickory Creek, tributary of Elm Fork Trinity River, tributary of the Trinity River, Trinity River Basin, for in-place recreational purposes. Station 4+00 on the centerline of the dam is S75 W, 1,526 feet from the northeast corner of the J.L. Rose Original Survey, Abstract No. 1097, at Latitude 33.108 N, Longitude 97.122 W, approximately 7.4 miles south of the City of Denton and approximately 2.4 miles north of Bartonville in Denton County, Texas. Ownership of the innundated land is evidenced by a Correction General Warranty Deed, filed on March 22, 2000 with the Denton County Clerk as Volume 4552, Pages 0465-0482. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application was received on October 1, 2004. Additional information was received on November 17, 2004. The application was declared administratively complete and filed with the Office of the Chief Clerk on January 12, 2005. Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200500907
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 1, 2005

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on February 24, 2005, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Gary R. Reeves; SOAH Docket No. 582-04-8213; TCEQ Docket No. 2003-1432-OSI-E The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Gary R. Reeves on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguia, Office of the Chief Clerk, (512) 239-3300.

TRD-200500909

LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 1, 2005

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Proposed Enforcement Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 18, 2005**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 18, 2005**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in **writing**.

(1) COMPANY: Ngoc Tran dba 5 Star Mart Inc.; DOCKET NUMBER: 2004-1815-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Facility Identification Number 49953, Regulated Entity Reference Number (RN) 102488616; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $3,210; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Jose Galarza dba 100 Quick Stop; DOCKET NUMBER: 2004-1753-PST-E; IDENTIFIER: PST Facility Identification Number 47680, RN101685584; LOCATION: Los Fresnos, Cameron County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $800; ENFORCEMENT COORDINATOR: Jill McNew, (512) 239-0560; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(3) COMPANY: BRG Enterprises, Inc. dba Chevron 7-4757; DOCKET NUMBER: 2004-1317-PST-E; IDENTIFIER: PST Facility Identification Number 17845, RN101632503; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(B) and (5)(B)(ii) and the Code, §26.346(a) and §26.3467(a), by failing to ensure that the underground storage tank (UST) registration and self-certification form was accurately completed and submitted and by failing to make available to a common carrier a valid, current delivery certificate; PENALTY: $1,440; ENFORCEMENT COORDINATOR: Mauricio Olaya, (915) 834-4949; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(4) COMPANY: Balques Inc. dba Sunshine Food 2; DOCKET NUMBER: 2005-0102-PST-E; IDENTIFIER: PST Facility Identification Number 38643, RN102130770; LOCATION: Denison, Grayson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: $2,400; ENFORCEMENT COORDINATOR: Howard Willoughby, (361) 825-3100; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Boling Municipal Water District; DOCKET NUMBER: 2003-0339-MWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10843-001, RN102806056; LOCATION: Boling, Wharton County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10843-001, and the Code, §26.121(a), by failing to comply with permitted effluent limits, by failing to submit noncompliance notifications for effluent violations, by failing to include all results of additional monitoring in the calculation and reporting of the values submitted on the discharge monitoring reports, and by failing to annually calibrate the secondary flow measuring device; 30 TAC §317.6(b)(1)(E), by failing to provide forced mechanical ventilation to the chlorine room; 30 TAC §319.11(d), by failing to provide accurate flow measurements; and 30 TAC §290.51 and the Code, §5.702, by failing to pay the late fee associated with the public health service fee; PENALTY: $26,581; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Cahill Country Water Supply Corporation; DOCKET NUMBER: 2004-0809-PWS-E; IDENTIFIER: Public Water Supply (PWS) Number 1260073, RN101183960; LOCATION: Alvarado, Johnson County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(e)(4)(A), (f), (i), (m)(1) and (4), (n)(2) and (3), and (t) and §290.11(c)(5)(A), by failing to maintain a record of operation and maintenance activities, by failing to conduct the annual inspection of the system's ground and pressure tanks, by failing to maintain a watertight condition in the lines of the distribution system, by failing to have an accurate up-to-date map of the distribution system, by failing to employ a Class D licensed operator, and by failing to post signs with required information; 30 TAC §290.42(l), by failing to have a plant operations manual; 30 TAC §290.43(c), by failing to maintain the 10,500 gallon storage tank; and 30 TAC § 290.45(b)(1)(B)(iv), by failing to meet the agency's minimum water system capacity requirements; PENALTY: $2,900; ENFORCEMENT COORDINATOR: Joseph Daley, (512) 239-3308; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Crystal Beach Corporation dba Sweads Grocery; DOCKET NUMBER: 2004-1565-PST-E; IDENTIFIER: PST Registration Number 0003909, RN101794196; LOCATION: Crystal Beach, Galveston County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; 30 TAC §334.48(c), by failing to conduct effective manual or automatic

inventory procedures for all UST systems; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to provide proper release detection; and 30 TAC §334.74, by failing to conduct release investigation and confirmation steps of a suspected release; PENALTY: $8,925; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: Lazaro Juarez dba Downtown Fuel Service Car Wash; DOCKET NUMBER: 2004-1973-PST-E; IDENTIFIER: PST Registration Number 74194, RN102716289; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: $1,900; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(9) COMPANY: Farmers Dairies, Ltd. dba Farmers Dairies; DOCKET NUMBER: 2004-2091-AIR-E; IDENTIFIER: Air Account Number EE1311Q, RN100818756; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: milk and dairy products; RULE VIOLATED: 30 TAC §114.100(a) and THSC, §382.085(b), by failing to meet the 2.7% by weight minimum oxygen content of gasoline; PENALTY: $1,000; ENFORCEMENT COORDINATOR: Kensley Greuter, (512) 239-2520; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(10) COMPANY: Troy Brown dba Foam Zone Car Wash; DOCKET NUMBER: 2004-1260-IWD-E; IDENTIFIER: RN102970779; LOCATION: Tyler, Smith County, Texas; TYPE OF FACILITY: commercial car wash; RULE VIOLATED: the Code, §26.121(a), by failing to prevent the unauthorized discharge of wastewater into waters in the state; PENALTY: $2,200; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(11) COMPANY: Greif, Inc. dba Greif Brothers; DOCKET NUMBER: 2004-1412-AIR-E; IDENTIFIER: Air Account Number HG1221O, RN102079662; LOCATION: La Porte, Harris County, Texas; TYPE OF FACILITY: metal container manufacturing; RULE VIOLATED: 30 TAC §122.145(2)(B) and §122.146(2) and THSC, §382.085(b), by failing to submit an annual compliance certification and deviation report; and the Code, §5.702(a) and THSC, §370.008, by failing to pay toxic chemical release fees; PENALTY: $4,700; ENFORCEMENT COORDINATOR: Mauricio Olaya, (915) 834-4949; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: Hung Phung dba H & H Discount; DOCKET NUMBER: 2004-1909-PST-E; IDENTIFIER: PST Facility Identification Number 7245, RN102227493; LOCATION: Amarillo, Potter County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $2,400; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(13) COMPANY: Liem T. Quan dba Happy 7 11; DOCKET NUMBER: 2004-1838-PST-E; IDENTIFIER: PST Facility Identification Number 39652, RN101447449; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $3,210; ENFORCEMENT COORDINATOR: Jill McNew, (512) 239-0560; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Harold McGehee dba Harold's Foods; DOCKET NUMBER: 2004-1788-PST-E; IDENTIFIER: PST Facility Identification Number 38202, RN101444990; LOCATION: Blue Mound, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(A)(i), by failing to renew a delivery certificate and by failing to make available to a common carrier a valid, current delivery certificate; PENALTY: $1,440; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: Harris County Municipal Utility District No. 217; DOCKET NUMBER: 2004-1859-MWD-E; IDENTIFIER: TPDES Permit Number WQ0014275001, RN102935186; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: water treatment plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0014275001, and the Code, §26.121(a), by failing to comply with permit effluent limits; PENALTY: $4,500; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: City of Henrietta; DOCKET NUMBER: 2003-1552-MWD-E; IDENTIFIER: TPDES Permit Number 0010454002, RN101701795; LOCATION: Henrietta, Clay County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 0010454002, and the Code, §26.121(a), by failing to maintain compliance with the permitted effluent limits; PENALTY: $4,320; ENFORCEMENT COORDINATOR: Sandy VanCleave, (512) 239-0667; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(17) COMPANY: Henry Allen Norris Jr.; DOCKET NUMBER: 2005-0009-OSI-E; IDENTIFIER: On-Site Sewage Facility (OSSF) Installer License Number OS0004141, RN103480000; LOCATION: Vidor, Orange County, Texas; TYPE OF FACILITY: OSSF; RULE VIOLATED: 30 TAC §285.61(4) and THSC, §366.051(c), by failing to obtain an authorization prior to beginning construction of an OSSF; PENALTY: $200; ENFORCEMENT COORDINATOR: Brandon Smith, (512) 239-4471; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(18) COMPANY: In Sook Jung dba Highland Mobil; DOCKET NUMBER: 2004-1546-PST-E; IDENTIFIER: PST Registration Number 70040, RN102040490; LOCATION: Highland Village, Denton County, Texas; TYPE OF FACILITY: convenience store; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $2,400; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: Rafia Sattar dba Junction Conoco; DOCKET NUMBER: 2004-1740-PST-E; IDENTIFIER: PST Registration Number 67479, RN101537173; LOCATION: Alvarado, Johnson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing t conduct an annual tightness test; 30 TAC §334.49(a)(4) and the Code, §26.3475(d), by failing to provide corrosion protection to all underground metal components of a UST system; and 30 TAC §334.46(f)(3)(A) and (h)(1), by failing to ensure the UST's piping system was installed to the manufacturer's specifications; PENALTY: $5,400; ENFORCEMENT COORDINATOR:

Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: Lake Conroe Hills Municipal Utility District; DOCKET NUMBER: 2004-1321-MWD-E; IDENTIFIER: TPDES Permit Number WQ0011569001, RN102080256; LOCATION: Willis, Montgomery County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0011569001, and the Code, §26.121(a), by failing to operate and maintain the facility in order to prevent the discharge of solids into the receiving stream and by failing to comply with the permitted effluent limits; PENALTY: $4,270; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: Amanda R. Lowe; DOCKET NUMBER: 2004-2068-OSI-E; IDENTIFIER: OSSF Installer License Number 0017965, RN103650982; LOCATION: Sour Lake, Hardin County, Texas; TYPE OF FACILITY: OSSF; RULE VIOLATED: 30 TAC §285.3(b)(1)(B) and THSC, §366.051(a), by failing to obtain an authorization prior to beginning construction of an OSSF; PENALTY: $200; ENFORCEMENT COORDINATOR: Brandon Smith, (512) 239-4471; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(22) COMPANY: MG Building Materials, Ltd.; DOCKET NUMBER: 2004-1598-MLM-E; IDENTIFIER: Solid Waste Registration Number 68403, RN101623791; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: wood treatment; RULE VIOLATED: 30 TAC §324.4(1) and THSC, §371.041, by failing to prevent an unauthorized discharge of used oil waste; 30 TAC §324.6 and 40 Code of Federal Regulations (CFR) §279.22(c), by failing to clearly mark or label all used oil containers; 30 TAC §335.62 and 40 CFR §262.11, by failing to conduct adequate waste determinations; 30 TAC §335.112(a)(18) and 40 CFR §265.441(c) and §265.443(i), by failing to submit the as-built drawings of the chromated copper arsenate (CCA) drip pad, certification by a licensed, professional engineer that the CCA drip pad conforms to the drawings, and by failing to document in a facility operating log all information concerning the cleaning of the drip pad; 30 TAC §335.112(a)(18) and 40 CFR §265.443(a)(4)(i) and (ii), (c), and (g), by failing to maintain the CCA drip pad surface and surrounding berms free of cracks and gaps and by failing to have a written assessment of the CCA trip, paid annually, re-certified by a licensed, professional engineer; and 30 TAC §335.1(131)(A)(iv) and 40 CFR §261.4(a)(9)(iii)(D) and (E), by failing to manage spent CCA wood preserving solution; PENALTY: $11,960; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(23) COMPANY: City of Milford; DOCKET NUMBER: 2003-1459-MWD-E; IDENTIFIER: TPDES Permit Number 13937-001, RN102080934; LOCATION: Milford, Ellis County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §30.331(b), TPDES Permit Number 13937-001, the Code, §26.0301(a), and THSC, §341.103, by failing to utilize the services of a properly licensed Class C wastewater treatment facility operator; 30 TAC §319.7(a) and (d), by failing to maintain proper field sampling techniques and documentation for chlorine residual and pH samples and by failing to submit discharge monitoring reports in a timely manner; 30 TAC §305.125(1) and §309.13(e)(3), TPDES Permit Number 13937-001, and the Code, §26.121(a), by failing to submit sufficient evidence of legal restriction prohibiting residential structures within the part of the buffer zone not owned by Milford and by failing to comply with permitted limits; PENALTY: $18,000; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: Usama Siddiqui dba Qavis; DOCKET NUMBER: 2004-1851-PST-E; IDENTIFIER: PST Facility Identification Number 39219, RN102284031; LOCATION: Mineola, Wood County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $3,200; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(25) COMPANY: Raul Perez dba RP Trucking Fuel Station; DOCKET NUMBER: 2004-0712-MLM-E; IDENTIFIER: RN104001128; LOCATION: Kingsville, Kleberg County, Texas; TYPE OF FACILITY: trucking fuel station; RULE VIOLATED: 30 TAC §111.201 and THSC, §382.085(b), by failing to comply with the general prohibition on outdoor burning; 30 TAC §334.126(a), by failing to comply with the notification requirements prior to initiating the installation of a new or replacement aboveground storage tank (AST); 30 TAC §334.127(a)(1), by failing to register the AST that did not meet the exclusion or exemption criteria of Chapter 334; 30 TAC §330.4(a), by failing to obtain commission authorization for an activity of storage, processing, removal, or disposal of municipal solid waste; 30 TAC §334.125(b) and the Code, §26.3457(a), by failing to make available to a common carrier a valid, current tank registration certificate; and 30 TAC §281.25(a)(4), by failing to obtain authorization to discharge storm water; PENALTY: $7,875; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(26) COMPANY: City of Raymondville; DOCKET NUMBER: 2004-1013-PWS-E; IDENTIFIER: PWS Number 2450001; LOCATION: Raymondville, Willacy County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(b)(1) and (2) and THSC, §341.0315(c), by failing to comply with the maximum contaminant level running annual average for total trihalomethanes and haloacetic acids; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Mauricio Olaya, (915) 834-4949; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(27) COMPANY: Pravina Solanki dba Redland Grocery FFP 559; DOCKET NUMBER: 2004-2051-PST-E; IDENTIFIER: PST Facility Identification Number 18495, RN102354552; LOCATION: Lufkin, Angelina County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $2,850; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(28) COMPANY: Sultan Momin dba Star Trac; DOCKET NUMBER: 2004-1765-PST-E; IDENTIFIER: PST Facility Identification Number 45705, RN102243227; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $2,140; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(29) COMPANY: Vopak Terminal Deer Park, Inc.; DOCKET NUMBER: 2004-1572-AIR-E; IDENTIFIER: Air Account Number HG0629I, Air Permit Number 466A, RN100225093; LOCATION:

Deer Park, Harris County, Texas; TYPE OF FACILITY: bulk liquid storage terminal; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 466A, and THSC, §382.085(b), by failing to comply with permitted emission limits; PENALTY: $6,900; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(30) COMPANY: WTG Gas Processing, L.P. dba East Vealmoor Gas Plant; DOCKET NUMBER: 2004-1629-AIR-E; IDENTIFIER: Air Account Number HT0016G, Air Permit Number 20137, RN10100211473; LOCATION: Cohoma, Howard County, Texas; TYPE OF FACILITY: natural gas processing; RULE VIOLATED: 30 TAC §122.145(2) and §122.146 and THSC, §382.085(b), by failing to submit complete and timely annual federal operating permit compliance certification and associated deviation reports; 30 TAC §116.115(b)(2)(F) and (c), Air Permit Number 20137, and THSC, §382.085(b), by failing to maintain the maximum pounds per hour allowable emission rate for sulfur dioxide, by failing to maintain the minimum sulfur recovery efficiency rate, and by failing to conduct monthly leak detection monitoring for volatile organic compound emissions; PENALTY: $34,040; ENFORCEMENT COORDINATOR: Jill Reed, (915) 570-1359; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

TRD-200500902
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: March 1, 2005

Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Miller at (512) 463-5780 or (800) 325-8506.

Deadline: Lobby Activities Report due August 10, 2004

Michael J. Warner, P.O. Box 92167, Austin, Texas 78709-2167

Deadline: Lobby Activities Report due September 10, 2004

Michael J. Warner, P.O. Box 92167, Austin, Texas 78709-2167

Deadline: Lobby Activities Report due October 12, 2004

Mark Seale, 1108 Lavaca, Ste. 300, Austin, Texas 78701

Michael J. Warner, P.O. Box 92167, Austin, Texas 78709-2167

Deadline: Lobby Activities Report due November 10, 2004

Michael J. Warner, P.O. Box 92167, Austin, Texas 78709-2167

Deadline: Lobby Activities Report due December 10, 2004

Marc H. Burns, 100 Congress Ave., Ste. 750, Austin, Texas 78701

Deadline: Personal Financial Statement due February 11, 2002

Michael James Sotir III, 18735 Appletree Hill Lane, Houston, Texas 77084

Deadline: Personal Financial Statement due April 30, 2002

Robert L. Parker, 1700 Farm Road 195, Paris, Texas 75462

Deadline: Personal Financial Statement due April 30, 2003

Robert L. Parker, 1700 Farm Road 195, Paris, Texas 75462

John Hendricks, Scott & White Hospital, General Surgery Dept., 2401 S. 31st St., Temple, TX 6508

Deadline: Personal Financial Statement due June 30, 2003

Rance G. Sweeten, 106 Rio Grande Dr., Mission, Texas 78572

William T. Wissen, 1100 W. 49th St., Austin, Texas 78756

William H. Watson, 5310 77th St., Lubbock, Texas 79424

Ron Lucey, 4800 N. Lamar, Bldg. 220, Austin, Texas 78756

James H. Lee, 1014 Potomac, Houston, Texas 77057

Deadline: Personal Financial Statement due February 11, 2004

Andrew Butler Hill, 6529 Turnberry Dr., Fort Worth, Texas 76132

Deadline: Personal Financial Statement due April 30, 2004

Robert L. Parker, 1700 Farm Road 195, Paris, Texas 75462

Michelle Tobias, 2618 Pecos St., Austin, Texas 78703

Deadline: Personal Financial Statement due June 29, 2004

Patrice Dyson Jones, 1929 Misty Mesa Trail, Grand Prairie, Texas 75052

Deadline: Personal Financial Statement due August 5, 2004

William Michael Wachel, 9206 Canter Dr., Dallas, Texas 75238

Deadline: Personal Financial Statement due August 30, 2004

Hector Delgado, 3030 McKinney, Unit 101, Dallas, Texas 75204

Deadline: Personal Financial Statement due September 29, 2004

Lawrence Allen, Jr., 4302 Grapevine, Houston, Texas 77045

TRD-200500888
David A. Reisman
Executive Director
Texas Ethics Commission
Filed: February 28, 2005

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Miller at (512) 463-5800 or (800) 325-8506.

Deadline: 30 Days Before An Election Report Due February 9, 2004

Russell Langely, Dallas County Democratic PAC - State & Local (CEC), 4209 Parry Ave., Dallas, Texas 75223

Deadline: 8 Days Before An Election Report Due March 1, 2004

Gerald M. Birnberg, Harris County Democratic Party, 6671 Southwest Freeway, Suite 303, Houston, Texas 77074-2221

Russell Langely, Dallas County Democratic PAC - State & Local (CEC), 4209 Parry Ave., Dallas, Texas 75223

Deadline: Semiannual GPAC Report Due July 15, 2004

James Richard Tyson, Dog PAC, P.O. Box 1326, Alvin, Texas 77512

Deadline: Semiannual JC/OH Report Due July 15, 2004

David W. Bradley, 5005 Milam St., Dallas, Texas 75206-6511

Deadline: 30 Days Before An Election Report Due October 4, 2004

Jon R. Gimble, Republican Women's Club PAC, P.O. Box 7291, Waco, Texas 76714

Dennis Tucker, 2489 North, Beaumont, Texas 77702

Deadline: 8 Days Before An Election Report Due October 25, 2004

Bernald Fred Ashmead, 1348 Gardenia, Houston, Texas 77018

Joseph D. Deshotel, P.O. Box 6025, Beaumont, Texas 77725

Donald J. Large, 11731 Fall Meadow Lane, Houston, Texas 77039-5803

John Patrick, Texas Political & Legislative Committee, P.O. Box 9699, Houston, Texas 77213

Dennis Tucker, 2489 North, Beaumont, Texas 77702

Deadline: Monthly MPAC Report Due November 5, 2004

Don King, Sensitive Care PAC, 500 N. Akard St., #3960, Dallas, Texas 75201-6604

Angie Barrientos, Friends of the Texas Latina Caucus, P.O. Box 684116, Austin, Texas 78768

Deadline: Monthly MPAC Report Due December 6, 2004

Carvel L. McNeil, Houston Police Patrolmen's Union PAC, 1900 N. Loop West, #540, Houston, Texas 77018

Don King, Sensitive Care PAC, 500 N. Akard St., #3960, Dallas, Texas 75201-6604

Angie Barrientos, Friends of the Texas Latina Caucus, P.O. Box 684116, Austin, Texas 78768

TRD-200500934
David Reisman
Executive Director
Texas Ethics Commission
Filed: March 2, 2005

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Office of the Governor

Notice of Application and Priorities for the Justice Assistance Grant Program Federal Application

The Governor's Criminal Justice Division (CJD) is preparing its application for the 2005 federal Edward Byrne Justice Assistance Grant Program. The allocation for Texas is expected to be $22,740,822. This is a reduction of 30% from the former Edward Byrne Memorial Formula Grant Program Fund.

The Governor's Criminal Justice Division proposes the following two funding priorities:

(1) coordinate efforts and leverage resources to disrupt the manufacturing, sale and trafficking of illegal drugs; and

(2) reduce the demand for drugs in coordination with a network of prevention and treatment programs.

Comments on the application or the priorities may be submitted in writing to Judy Switzer by email at jswitzer@governor.state.tx.us or mailed to the Criminal Justice Division, Office of the Governor, P.O. Box 12428, Austin, Texas 78711. Comments must be received or postmarked no later than 30 days from the date of publication of this announcement in the *Texas Register*.

TRD-200500943
David Zimmerman
Assistant General Counsel
Office of the Governor
Filed: March 2, 2005

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Request for Proposals: EPA Targeted Watershed Grant Program

The Office of the Governor (OOG) is accepting proposals for nomination by the governor to compete for funding from the U.S. Environmental Protection Agency (EPA) Targeted Watershed Grant Program.

Approximately $10 million will be available to support projects nation-wide. EPA anticipates that typical grant awards for the selected watersheds will range from $600,000 to $900,000 depending on the amount requested and the overall size and need of the project. EPA is requiring applicants to demonstrate a minimum non-federal match of 25% of the total budget of the project. In addition to cash, the match may be contributed in the form of in-kind goods and services, such as the use of volunteers and their donated time, equipment, expertise, etc., consistent with the regulation governing match requirements (40 CFR 31.24 or 40 CFR 30.23).

Proposals for nomination submitted to the OOG should respond to and be in conformity with the guidelines and priorities outlined in the EPA Targeted Watershed Grant Program notice published in February 18, 2005 the issue of the Federal Register Volume 70, Number 33 (Notices) Page 8364-8372. This notice can be found on the EPA website: http://www.epa.gov/fedrgstr/EPA-WATER/2005/February/Day-18/w3184.htm

Two (2) projects within the State of Texas will be selected by the OOG and submitted to EPA. Applications submitted to the OOG will be evaluated using the criteria outlined in the EPA Targeted Watershed Grant Program notice. In addition to the two projects located exclusively in Texas nominated by the OOG, an unlimited number of inter-state or joint state and tribal watershed projects may be nominated. It is the responsibility of inter-state or joint state and tribal project administrators to submit applications to the appropriate state and tribal entities.

Application submittal: One electronic copy and five complete paper copies of each proposal must be received by 5 p.m. April 8, 2005.

Electronic. Please send an electronic copy of only the title page, abstract, work plan description, and budget form to rayer@governor.state.tx.us. Electronic submissions are limited to 120 KB in size and one submission per applicant. Do not send maps, letters of support, match certifications, or pictures of any kind via the electronic mailbox. The subject line must be in the format ''STATE--Watershed Name'' (e.g., TX--Rock Creek). No confidential business information should be sent via e-mail. The deadline for all electronic submissions is 5 p.m. April 8, 2005. If unusual or extraordinary circumstances prevent electronic submission of the proposal, please contact Ron Ayer (512) 463-6678.

Paper. Five hard copies of the complete proposal (including attachments, support letters, match commitments, etc.) must be received by 5 p.m. April 8, 2005. Submissions by conventional mail delivery should be sent to: State Grants Team, Office of the Governor, P.O. Box 12428, Austin, Texas 78711, ATTN: Ron Ayer, Targeted Watershed Grant Program. Submissions by courier should be sent to State Grants Team, Office of the Governor, State Insurance Bldg., 1100 San Jacinto, Austin, Texas 78701, ATTN: Ron Ayer, Targeted Watershed Grant Program. Contact phone: (512) 463-6678.

This Request for Proposals is the only written document containing application instructions available to applicants from the OOG. Information contained in proposals should comply with relevant sections from the above referenced Federal Register notice issued by EPA. Only those nominees selected by EPA for awards will be required to submit a formal grant application directly to EPA.

Contact information: Office of the Governor: Ron Ayer, (512) 463-6678, rayer@governor.state.tx.us; EPA Region VI: Brad Lamb, (214) 665-6683, lamb.brad@epa.gov.

TRD-200500930

Katherine Knight
Assistant General Counsel
Office of the Governor
Filed: March 1, 2005

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Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Austin	Cellzdirect Inc	L05866	Austin	00	02/25/05
Houston	A & A Tubular Services Inc	L05871	Houston	00	02/25/05
Sugar Land	E+ PET Imaging XI LP DBA PET Imaging of Sugar Land	L05858	Sugar Land	00	02/22/05
Throughout TX	Luling Perforators Inc	L05870	Buda	00	02/22/05

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Amarillo	Cardiology Center of Amarillo LLP	L05736	Amarillo	01	02/24/05
Austin	Austin Heart PA	L05580	Austin	07	02/22/05
Austin	Austin Heart PA	L04623	Austin	24	02/22/05
Austin	HTI/ADC Venture DBA North Austin Medical Ctr	L04910	Austin	44	02/24/05
Austin	Austin Heart PA	L04623	Austin	25	02/24/05
Austin	HTI/ADC Venture DBA North Austin Medical CTR	L04910	Austin	45	02/25/05
Bonham	Northeast Medical Center LP DBA Northeast Medical Center	L03331	Bonham	24	02/17/05
Carrollton	Tenet Health System Hospitals Dallas Inc DBA Trinity Medical Center	L03765	Carrollton	46	02/17/05
Cleburne	Walls Regional Hospital DBA Harris Methodist Walls Regional Hospital	L02039	Cleburne	35	02/16/05
Conroe	CHCA Conroe LP DBA Conroe Regional Medical Center	L01769	Conroe	63	02/16/05
Conroe	Montgomery County Cardiovascular Association	L05151	Conroe	13	02/15/05
Corpus Christi	Cardiology Associates of Corpus Christi	L04611	Corpus Christi	23	02/24/05
Corpus Christi	Everest Exploration Inc	L03626	Corpus Christi	10	02/07/05
Corsicana	Navarro Hospital Inc LP DBA Navarro Regional Hospital	L02458	Corsicana	28	02/23/05
Dallas	Presbyterian Hospital of Dallas	L01586	Dallas	82	02/17/05
Del Rio	Val Verde Regional Medical Center	L01967	Del Rio	25	02/22/05
El Paso	Physicians Specialty Hospital of El Paso E LP DBA Physicians Hospital	L05676	El Paso	03	02/22/05
Fort Worth	Computalog Wireline Products Inc	L00747	Fort Worth	67	02/17/05
Fort Worth	John Peter Smith Hospital	L02208	Fort Worth	53	02/17/05
Fort Worth	Cardiology Associates of Fort Worth PA	L05480	Fort Worth	12	02/25/05
Galveston	The University of Texas Medical Branch	L01299	Galveston	65	02/25/05

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	Nuclear Imaging Services LLC	L05775	Houston	05	02/16/05
Houston	The Methodist Hospital	L00457	Houston	130	02/15/05
Houston	Harris County Hospital District DBA LBJ General Hospital	L04412	Houston	29	02/23/05
Huntsville	Huntsville Memorial Hospital	L02822	Huntsville	11	02/23/05
Kaufman	Presbyterian Hospital of Kaufman	L03337	Kaufman	15	02/17/05
La Grange	Austin Heart La Grange	L05516	La Grange	06	02/22/05
Laredo	Laredo Regional Medical Center LP DBA Doctors Hospital of Laredo	L02192	Laredo	32	02/17/05
Lubbock	University Medical Center	L04719	Lubbock	76	02/15/05
Marble Falls	Austin Heart PA DBA Austin Heart Clinic Marble Falls	L05505	Marble Falls	07	02/22/05
Mission	South Texas Imaging Center-K PA DBA STIC-K	L05636	Mission	02	02/16/05
Pasadena	Conam Inspection & Engineering Inc	L05010	Pasadena	88	02/24/05
Pasadena	The Dow Chemical Company Clear Lake Operations	L05829	Pasadena	01	02/25/05
Plainview	Plainview Cardiology PA	L05446	Plainview	04	02/16/05
Richmond	Polly Ryon Hospital Authority DBA Oakbend Medical Center	L02406	Richmond	35	02/24/05
Round Rock	Austin Heart PA DBA Austin Heart	L05456	Round Rock	09	02/22/05
San Antonio	Christus Santa Rosa Health Care	L02237	San Antonio	82	02/15/05
San Antonio	Methodist Healthcare System of San Antonio DBA Methodist Hospital	L00594	San Antonio	199	02/21/05
San Antonio	The University of Texas Health Science Center at San Antonio DBA UTSCSA Research Imaging Center	L05556	San Antonio	06	02/18/05
San Antonio	VHS San Antonio Partners LP DBA Baptist Health System	L00455	San Antonio	141	02/22/05
San Antonio	Accord Medical Management LP DBA Nix Health Care System	L03531	San Antonio	23	02/25/05
Sherman	Sherman Cardiovascular Care Associates PA	L05271	Sherman	05	02/18/05
Throughout TX	Kleinfelder	L01351	Austin	48	02/22/05
Throughout TX	Texas Commission on Environmental Quality	L01715	Austin	36	02/17/05
Throughout TX	Brazos Valley Inspection Services Inc	L02859	Bryan	43	02/25/05
Throughout TX	Rone Engineering Services LTD	L02356	Dallas	27	02/18/05
Throughout TX	Computalog Wireline Services Inc	L04286	Fort Worth	53	02/24/05
Throughout TX	Terra-Mar Inc	L03157	Fort Worth	43	02/15/05
Throughout TX	The Dow Chemical Company	L00451	Freeport	75	02/22/05
Throughout TX	Atser Corporation	L04741	Houston	21	02/15/05
Throughout TX	Baker Hughes Oilfield Operations Inc DBA Baker Atlas	L00446	Houston	157	02/18/05
Throughout TX	H & G Inspection Company Inc ADBA Statewide Maintenance Company	L02181	Houston	195	02/22/05
Throughout TX	Southern Services Inc DBA Southern Technical Services DBA Bix Testing Laboratories	L05270	Lake Jackson	38	02/16/05
Throughout TX	T C Inspection Inc	L05833	Oyster Creek	01	02/15/05

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout TX	Conam Inspection & Engineering Inc	L05010	Pasadena	86	02/16/05
Throughout TX	Conam Inspection & Engineering Inc	L05010	Pasadena	87	02/22/05
Throughout TX	Texas Gamma Ray LLC	L05561	Pasadena	48	02/17/05
Throughout TX	Texas Gamma Ray LLC	L05561	Pasadena	49	02/24/05
Throughout TX	Apex Geoscience Inc	L04929	Tyler	16	02/15/05
Throughout TX	Lindsey Contractors Inc	L05343	Waco	04	02/15/05
Tyler	Trinity Mother Frances Health System	L01670	Tyler	116	02/23/05
Tyler	East Texas Medical Center	L00977	Tyler	119	02/25/05
Weslaco	Frontera Materials Inc	L04830	Weslaco	10	02/15/05
Wichita Falls	Clinics of North Texas LLP	L00523	Wichita Falls	46	02/22/05

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Andrews	Waste Control Specialists LLC	L04971	Andrews	33	02/25/05
Houston	Memorial Hermann Hospital System DBA Memorial Hospital Southwest	L00439	Houston	101	02/18/05
La Porte	Rohm & Haas Company Bayport Plant	L04368	La Porte	10	02/18/05
Longview	Eastman Chemicals Company	L00301	Longview	97	02/15/05
Longview	King Tool Company	L05142	Longview	04	02/24/05
Throughout TX	Kellys Pipe Inspection Inc	L05120	Odessa	02	02/17/05

LICENSE EXEMPTION ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Dallas	Hooper Engineering Laboratories Inc	L02309	Dallas		02/22/05
Houston	Tolunay Wong Engineers Inc	L04848	Houston		02/22/05

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC), Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200500901
Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: March 1, 2005

Notice of Amendment Number 32 to the Radioactive Material License of Waste Control Specialists, LLC

Notice is hereby given by the Department of State Health Services (department), Radiation Safety Licensing Branch that it has amended Radioactive Material License Number L04971 issued to Waste Control Specialists, LLC (WCS) located in Andrews County, Texas, one mile North of State Highway 176; 250 feet East of the Texas/New Mexico State Line; 30 miles West of Andrews, Texas.

Amendment number 32 authorizes the construction of two new pad locations for interim waste storage. At the same time, authorization is given for an increased capacity in waste storage volume to make utilization of the new storage areas. Finally, since justification for the

additional space involves possible Department of Energy (DOE) contracted waste, which could include uranium by-product waste as defined in Texas Health and Safety Code, §401.003(3)(B), from the DOE Closure Project in Fernald, Ohio, limitations for retention time and department approved federal agreements for responsibility of the waste have been established through license conditions.

The department has determined that the amendment of the license and the documentation submitted by the licensee provide reasonable assurance that the licensee's radioactive waste processing facility is operated in accordance with the requirements of 25 Texas Administrative Code (TAC), Chapter 289; the amendment of the license will not be inimical to the health and safety of the public or the environment; and the activity represented by the amendment of the license will not have a significant effect on the human environment.

This notice affords the opportunity for a public hearing, upon written request, within 30 days of the date of publication of this notice by a person affected as set out in 25 TAC, §289.205(f). A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to a county, in which the radioactive material is or will be located; or (b) doing business or has a legal interest in land in the county or adjacent county.

A person affected may request a hearing by writing Mr. Richard A. Ratliff, P.E., Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas, 78756-3189. Any request for a hearing must contain the name and address of the person who considers himself affected by this action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated. Should no request for a public hearing be timely filed, the agency action will be final.

A public hearing, if requested, shall be conducted in accordance with the provisions of Texas Health and Safety Code, Chapter 401, the Administrative Procedure Act (Texas Government Code, Chapter 2001), the formal hearing procedures of the department (25 TAC, §1.21 et seq.) and the procedures of the State Office of Administrative Hearings (1 TAC, Chapter 155).

A copy of the license amendment and supporting materials are available, by appointment, for public inspection and copying at the office of the Radiation Safety Licensing Branch, Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, 8:00 a.m. to 5:00 p.m., Monday-Friday (except holidays). Information relative to inspection and copying the documents may be obtained by contacting Chrissie Toungate, Custodian of Records, Radiation Safety Licensing Branch.

TRD-200500898
Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: March 1, 2005

Notice of Intent to Revoke the Certification of Mammography Systems of Cyvon Imaging, Inc., dba Community Diagnostics

Notice is hereby given that the Radiation Control Program, Department of State Health Services (department), filed a complaint against Cyvon Imaging, Inc., dba Community Diagnostics, 122 West Colorado, Suite 100, Dallas, Texas 75208, Registration Number M00702 for the alleged failure to comply with an agency order.

The department intends to revoke the certification of mammography systems; order the registrant to cease and desist use of such mammography machine(s); order the registrant to divest itself of such equipment; and order the registrant to present evidence satisfactory to the department that it has complied with the orders and the provisions of the Texas Health and Safety Code, Chapter 401.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200500897
Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: March 1, 2005

Notice of Intent to Revoke the Certificate of Registration of Anant Mauskar, M.D., P.A.

Notice is hereby given that the Radiation Control Program, Department of State Health Services (department), filed a complaint against the following registrant: Anant Mauskar, M.D., P.A., 8300 Homestead, Suite 5, Houston, Texas 77028, Registration Number R22288 for alleged violations of an agency order.

The department intends to revoke the certificate of registration; order the registrant to cease and desist use of such radiation machine(s); order the registrant to divest himself of such equipment; and order the registrant to present evidence satisfactory to the department that he has complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the items in the complaint are corrected within 30 days of the date of the complaint, the department will not issue an order.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200500900
Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: March 1, 2005

Notice of Intent to Revoke the Certificate of Registration of Inwood Dental, P.A.

Notice is hereby given that the Radiation Control Program, Department of State Health Services (department), filed a complaint against the following registrant: Inwood Dental, P.A., 8240 Antoine, Suite 202, Houston, Texas 77088, Registration No. R26377 for alleged violations of an agency order.

The department intends to revoke the certificate of registration; order the registrant to cease and desist use of such radiation machine(s); order the registrant to divest itself of such equipment; and order the registrant to present evidence satisfactory to the department that it has complied with the orders and the provisions of the Health and Safety Code, Chapter 401.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange

Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200500899
Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: March 1, 2005

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Texas Higher Education Coordinating Board

Request for Proposals 2004 - 2005 First Generation College Student Grant Program, Under U.S. Department of Labor's Workforce Investment Act, Section 174(B), Section 211(A), and Section 111(A)

Approximately $600,000 over 2004 - 2005 will be available to support supplemental scholarships for eligible first generation college students in Texas institutions of higher education, and to support College Enrollment Workshops conducted by institutions of higher education.

Funds will be competitively distributed by the Texas Higher Education Coordinating Board under the First Generation College Student Initiative. This initiative is a joint effort between the Texas Workforce Commission, the Texas Education Agency and the Texas Higher Education Coordinating Board. Proposals for funding must be submitted by March 15, 2005 to the Texas Higher Education Coordinating Board. Applications will be available on the website of the Coordinating Board during the week of February 28, 2005 and thereafter.

The First Generation College Student Grants which will be awarded to institutions of higher education are designed to support the recruitment and retention of eligible first generation college students from targeted regions of the state. The targeted regions, defined by the Texas Workforce Commission's Local Workforce Development Board Regions, include Cameron County, Deep East Texas, Gulf Coast, South East Texas, South Plains, Upper Rio Grande, Alamo, Dallas, North Central, North East Texas, Panhandle, and Tarrant County Workforce Development Areas. Grants awards of up to $25,000 each will be made to support eligible applicants, with an estimated 24 awards for 2004 - 2005.

All public and private colleges and universities are eligible to apply for grants under the First Generation College Student Grants Program, if they are responsive to the priorities and restrictions described in the Request for Proposals.

For information, contact the First Generation College Student Grants Program at (512) 427-6227 or visit the Texas Higher Education Coordinating Board website at http://www.thecb.state.tx.us/AnE/FirstGenCollegeStudentGrant/FY05/RFPdefault.htm.

TRD-200500877
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Filed: February 25, 2005

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Texas Department of Housing and Community Affairs

Announcement of the Housing Tax Credit Program Credit Ceiling for the 2005 Credit Allocation

Pursuant to §49.4 of the 2005 Qualified Allocation Plan and Rules the Department has determined the State Housing Credit Ceiling for 2005 based on the information and guidance provided by the Internal Revenue Service in Notice 2005-16. Based on that information, the 2005 State Housing Credit Ceiling for 2005 is $41,606,541.

Pursuant to §2306.111, Texas Government Code, the State Housing Credit Ceiling will be distributed based on a regional distribution formula to all urban/exurban and rural areas in each of the state's thirteen service regions. The targeted regional distribution for the 2005 State Housing Credit Ceiling is available at the Department's web site at http://www.tdhca.state.tx.us/lihtc.htm. For more information on the program please contact Jennifer Joyce directly at (512) 475-3995 or jjoyce@tdhca.state.tx.us.

TRD-200500878
Edwina Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: February 28, 2005

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Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by PHOENIX INDEMNITY INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Phoenix, Arizona.

Application to change the name of ATLANTIC LLOYD'S INSURANCE COMPANY OF TEXAS to ALICOT INSURANCE COMPANY, a domestic fire and/or casualty company. The home office is in Austin, Texas.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701, within 20 days after this notice is published in the *Texas Register*.

TRD-200500937
Brenda Caldwell
Special Regulatory Counsel
Texas Department of Insurance
Filed: March 2, 2005

♦ ♦ ♦

Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for incorporation in Texas of PREMIER PENSION SOLUTIONS, L.L.C., a domestic third party administrator. The home office is WACO, TEXAS.

Application for admission to Texas of AMERICAN DENTAL PROFESSIONAL SERVICES, LLC., (using the assumed name of AMERICAN DENTAL ADVANTAGE SERVICES) a foreign third party administrator. The home office is WILMINGTON, DELAWARE.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200500935
Brenda Caldwell
Special Regulatory Counsel
Texas Department of Insurance
Filed: March 2, 2005

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Third Party Administrator Applications

The following third party administrator (TPA) application has been filed with the Texas Department of Insurance and is under consideration.

Application for admission to Texas of AMERICAN SPECIALTY INSURANCE SERVICES, INC., a foreign third party administrator. The home office is INDIANAPOLIS, INDIANA.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200500938
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: March 2, 2005

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North Central Texas Council of Governments

Notice of Consultant Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant proposal request appeared in the October 15, 2004 issue of the *Texas Register* (29 TexReg 9730). The selected consultant will conduct a Light Rail Expansion Impact Analysis for Dallas Area Rapid Transit.

The consultant selected for this project is NuStats Partners, L.P., 3006 Bee Caves Road, Suite A300, Austin, Texas. The maximum amount of this contract is $137,954.

Issued in Arlington, Texas on February 23, 2005.

TRD-200500830
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: February 23, 2005

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Public Utility Commission of Texas

Notice of Application for Transfer of Responsibility for Administration of Nuclear Decommissioning Trust Funds

Notice is given to the public of an application for transfer of responsibility for administration of nuclear decommissioning trust funds with the Public Utility Commission of Texas on February 10, 2005, pursuant to the Public Utility Regulatory Act, TEXAS UTILITY CODE ANNOTATED §§14.001, 14.002, 39.205 (Vernon 1998 & Supplement 2005) (PURA) and P.U.C. Substantive Rule §25.303.

Docket Style and Number: Joint Application of AEP Texas Central Company and Texas Genco for Transfer of Responsibility for Administration of Nuclear Decommissioning Trust Funds, Docket Number 30749.

The Application: AEP Texas Central Company (TCC) and Texas Genco filed a joint application for review of agreements relating to the transfer of a proportionate share of TCC's nuclear decommissioning funds, rights, and responsibilities to Texas Genco in conjunction with the sale of a portion of TCC's undivided interest in the South Texas Nuclear Project (STP).

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 30749.

TRD-200500879
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 28, 2005

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Notice of Application for Transfer of Responsibility for Administration of Nuclear Decommissioning Trust Funds

Notice is given to the public of an application for transfer of responsibility for administration of nuclear decommissioning trust funds with the Public Utility Commission of Texas on February 14, 2005, pursuant to the Public Utility Regulatory Act, TEXAS UTILITY CODE ANNOTATED §§14.001, 14.002, 39.205 (Vernon 1998 & Supplement 2005) (PURA) and P.U.C. Substantive Rule 25.303.

Docket Style and Number: Application of the San Antonio City Public Service Board for Transfer of Responsibility for Administration of Nuclear Decommissioning Trust Funds, Docket Number 30759.

The Application: The City of San Antonio, Texas, acting by and through the City Public Service Board of Trustees filed an application requesting that the responsibility for administering nuclear decommissioning trust funds be transferred to City Public Service Board from AEP Texas Central Company with respect to previously accumulated nuclear decommissioning trust funds of AEP Texas Central Company and nuclear decommissioning trust funds being collected by AEP Texas Central Company from its customers. City Public Service Board stated that the nuclear decommissioning trust funds are being collected to meet the decommissioning responsibilities for AEP Texas Central Company's interest in the South Texas Nuclear Project for its and for City Public Service Board's benefit in connection with the pending transfer to City Public Service Board of its proportionate share of AEP Texas Central Company's ownership of the South Texas Nuclear Project.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 30759.

TRD-200500880
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 28, 2005

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Notice of Application for Transfer of Responsibility for Administration of Nuclear Decommissioning Trust Funds

Notice is given to the public of an application for transfer of responsibility for administration of nuclear decommissioning trust funds with the Public Utility Commission of Texas on February 14, 2005, pursuant to the Public Utility Regulatory Act, TEXAS UTILITY CODE ANNOTATED §§ 14.001, 14.002, 39.205 (Vernon 1998 & Supplement 2005) (PURA) and P.U.C. Substantive Rule § 25.303.

Docket Style and Number: Joint Application of AEP Texas Central Company and the San Antonio City Public Service Board for Transfer of Responsibility for Administration of Nuclear Decommissioning Trust Funds, Docket Number 30760.

The Application: AEP Texas Central Company (TCC) and the City of San Antonio, Texas, acting by and through the City Public Service Board (CPS) filed a joint application for review of agreements relating to the transfer of a proportionate share of TCC's nuclear decommissioning funds, rights, and responsibilities to CPS in conjunction with the sale of a portion of TCC's undivided interest in the South Texas Nuclear Project (STP).

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 30760.

TRD-200500881
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 28, 2005

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Notice of Application to Amend Designation as an Eligible Telecommunications Carrier Pursuant to P.U.C. Substantive Rule §26.418

Notice is given to the public of an application filed with the Public Utility Commission of Texas on February 22, 2005, for designation as an eligible telecommunications carrier (ETC) pursuant to P.U.C. Substantive Rule §26.418.

Docket Title and Number: Application of Cumby Telephone Cooperative, Inc. to Amend its Designation as an Eligible Telecommunications Carrier (ETC). Docket Number 30787.

The Application: Cumby Telephone Cooperative, Inc. (Cumby) was granted ETC designation in the Lone Oak and Miller Grove exchanges. Cumby now seeks designation as an ETC in the Cooper exchange where Sprint - United is the incumbent provider. Cumby holds Certificate of Operating Authority Number 50017.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than March 25, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30787.

TRD-200500884
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 28, 2005

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Notice of Application to Amend Designation as an Eligible Telecommunications Provider Pursuant to P.U.C. Substantive Rule §26.417

Notice is given to the public of an application filed with the Public Utility Commission of Texas on February 22, 2005, for designation as an eligible telecommunications provider (ETP) pursuant to P.U.C. Substantive Rule §26.417.

Docket Title and Number: Application of Cumby Telephone Cooperative, Inc. to Amend its Designation as an Eligible Telecommunications Provider (ETP). Docket Number 30786.

The Application: Cumby Telephone Cooperative, Inc. (Cumby) was granted ETP designation in the Lone Oak and Miller Grove exchanges. Cumby now seeks designation as an ETP in the Cooper exchange where Sprint - United is the incumbent provider. Cumby holds Certificate of Operating Authority Number 50017.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than March 25, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30786.

TRD-200500883
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 28, 2005

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Notice of Application to Provide Non-Emergency 311 Service for the City of Arlington

Notice is given to the public of an application filed on February 18, 2005, with the Public Utility Commission of Texas, to provide non-emergency 311 service for the City of Arlington. A summary of the application follows.

Docket Style and Number: Application of Southwestern Bell Telephone, L.P. d/b/a SBC Texas for Administrative Approval to Provide Non-Emergency 311 Service for the City of Arlington. Docket Number 30776.

The Application: Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an administrative filing by Southwestern Bell Telephone, LP d/b/a SBC Texas (SBC Texas), for approval of the provision of Non-Emergency 311 Service, pursuant to P.U.C. Substantive Rule § 26.127, and SBC Texas' existing General Exchange Tariff, Section 47.

As a certified telecommunications utility (CTU), SBC Texas seeks approval on behalf of the City of Arlington for the City of Arlington to provide Non-Emergency 311 (NE 311) service to its residents within the legally-defined city limits of the City of Arlington in Tarrant County, Texas. NE 311 is available to local government entities to provide to their residents an easy-to-remember number to call for access to non-emergency services. By implementing NE 311 service, communities can improve 911 response times for those callers with true emergencies. Each local government entity that elects to implement NE 311 will determine the types of non-emergency calls that will handled by their 311 call center.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by April 12, 2005. Requests for further information should be mailed to the commission at P. O. Box 13326, Austin, Texas 78711-3326, or you may call the commission's Office of Customer Protection at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 30776.

TRD-200500882
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 28, 2005

Notice of Application to Relinquish a Service Provider Certificate of Operating Authority

On February 24, 2005, SOTELCO, Incorporated filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60505. Applicant intends to relinquish its certificate.

The Application: Application of SOTELCO, Incorporated to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 30795.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than March 16, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30795.

TRD-200500903
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 1, 2005

Texas Department of Transportation

Aviation Division Request for Proposal for Professional Services

The City of Bryan through its agent, the Texas Department of Transportation (TxDOT), intends to engage an aviation professional services firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT, Aviation Division will solicit and receive proposals for professional services as described below:

Airport Sponsor: City of Bryan, Coulter Field Airport, TxDOT CSJ No.0517BRYAN, Scope: Prepare an Airport Development Plan which includes, but is not limited to, information regarding existing and future conditions, proposed facility development to meet existing and future demand, constraints to develop anticipated capital needs, financial considerations, management structure and options, as well as an updated Airport Layout Plan. The Airport Development Plan should be tailored to the individual needs of the airport.

The HUB goal is set at 0%. TxDOT Project Manager is Chris Munroe.

Interested firms shall utilize the Form AVN-551, titled "Aviation Planning Services Proposal". The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be e-mailed by request or downloaded from the TxDOT web site, URL address http://www.dot.state.tx.us/avn/avn551.doc. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. (Attention: To ensure utilization of the latest version of Form 551, firms are encouraged to download Form 551 from the TxDOT website as addressed above. Utilization of Form 551 from a previous download may not be the exact same format. Form 551 is an MS Word Template).

Six unfolded copies of Form AVN-551 must be postmarked by U. S. Mail by midnight April 4, 2005 (CDST). Mailing address: TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. (CDST) on April 5, 2005; overnight address: TxDOT, Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Please mark the envelope of the forms to the attention of Edie Stimach. Hand delivery must be received by 4:00 p.m. April 5, 2005 (CDST); hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by e-mail will not be accepted.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating planning proposals can be found at www.dot.state.tx.us/business/avnconsultinfo.htm. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. In such case, selection will be made following interviews.

If there are any procedural questions, please contact Edie Stimach, Grant Manager, or Chris Munroe, Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-200500895
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: March 1, 2005

Aviation Division Request for Proposal for Professional Services

The City of Hondo through its agent, the Texas Department of Transportation (TxDOT), intends to engage an aviation professional services firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT, Aviation Division will solicit and receive proposals for professional services as described below:

Airport Sponsor: City of Hondo, Hondo Municipal Airport, TxDOT CSJ No.0515HONDO, Scope: Prepare an Airport Master Plan which includes, but is not limited to, information regarding existing and future conditions, proposed facility development to meet existing and future demand, constraints to develop anticipated capital needs, financial considerations, management structure and options, as well as an updated

Airport Layout Plan. The Airport Master Plan should be tailored to the individual needs of the airport.

The HUB goal is set at 0%. TxDOT Project Manager is Chris Munroe.

Interested firms shall utilize the Form AVN-551, titled "Aviation Planning Services Proposal". The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be e-mailed by request or downloaded from the TxDOT web site, URL address http://www.dot.state.tx.us/avn/avn551.doc. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. (Attention: To ensure utilization of the latest version of Form 551, firms are encouraged to download Form 551 from the TxDOT website as addressed above. Utilization of Form 551 from a previous download may not be the exact same format. Form 551 is an MS Word Template).

Six unfolded copies of Form AVN-551 must be postmarked by U. S. Mail by midnight April 4, 2005 (CDST). Mailing address: TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. (CDST) on April 5, 2005; overnight address: TxDOT, Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Please mark the envelope of the forms to the attention of Edie Stimach. Hand delivery must be received by 4:00 p.m. April 5, 2005 (CDST); hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by e-mail will not be accepted.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating planning proposals can be found at www.dot.state.tx.us/business/avnconsultinfo.htm. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. In such case, selection will be made following interviews.

If there are any procedural questions, please contact Edie Stimach, Grant Manager, or Chris Munroe, Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-200500896
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: March 1, 2005

Questions and Responses, RFP 47-5XXPA001

The Maintenance Division of the Texas Department of Transportation (TxDOT) issued Request for Proposal 47-5XXPA001 on February 11, 2005, regarding hiring a consultant to develop business requirements for replacing TxDOT's existing Maintenance Management System. The following questions were received by the Maintenance Division with regard to the original Request for Proposal (RFP). The RFP and these questions and responses are also posted on the following website: http://www.dot.state.tx.us/mnt/contract/rfp.htm.

Question 1: What are the functionalities (Modules of the maintenance) that the existing system covers?

Response: Reporting

Question 2: What are the technical specifications of the existing system?

Response: MMIS was developed in-house as a mainframe application written in Natural.

Question 3: Is TxDOT contemplating to replace the existing system or are they open for enhancements to be performed on the existing system?

Response: TxDOT is looking for the best solution. The decision whether to modify or replace the system will be based on the business requirements.

Question 4: Is TxDOT planning to release a new RFP for the implementation?

Response: Yes

Question 5: With reference to Section 2.1 Evaluation and Selection & 3.1: The interview identified is with individual consultants being proposed or for the organization that is bidding for this opportunity. Can we read this requirement/criteria as proposal defense?

Response: "Consultant" is defined as the firm selected from this RFP. TxDOT will conduct interviews with the actual person and the team that is being proposed.

Question 6: Is there any specific timelines for TxDOT for completion of the project?

Response: TxDOT is estimating that this phase will take 9 months to complete. No definite deadline has been determined.

Question 7: With reference to provision of Client Reference: do we provide reference of a Business Requirements Documentation (BRD) preparation and/or Asset Management Consulting or does the reference need to comply with requirements like (In case you find this necessary to ask then please forward this to client):?

a. Departments of Transportation

b. Asset Management

c. BRD Preparation

Response: References should be from a similar project, or as close to this project as possible.

If you need further information regarding these questions and responses, please contact Brandye Payne, Texas Department of Transportation, Maintenance Division, 125 E. 11th Street, Austin, TX 78701-2483, 512/416-3191.

TRD-200500933
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: March 2, 2005

Record of Decision--Kelly Parkway

The following Record of Decision for the Kelly Parkway project was signed by the Federal Highway Administration (FHWA) on February 2, 2005. The project is being developed jointly with the FHWA and the Texas Department of Transportation.

Decision

The Texas Department of Transportation (TxDOT) and the FHWA have approved the proposed construction of the Kelly Parkway in southwest San Antonio, Bexar County, Texas. The parkway-type facility will extend approximately 8.8 miles from US90 on the north end to SH16 to the south. The limited access facility will consist of two through lanes in each direction, for a total of four lanes. On and off ramps will be provided at major intersecting roadways. Full interchanges will be built at US 90, Kelly Crossroads, W. Southcross Boulevard, SW Military Drive, Loop 353, I-35, and I-410, and a partial interchange will be constructed at SH 16. The purpose of the proposed Kelly Parkway is to increase transportation system efficiency and effectiveness by addressing the area's transportation needs over the near and long term. The needs for the project are to improve transportation mobility, facilitate economic development, and enhance safety.

The need for improved transportation in Southwest San Antonio was identified in two separate studies: the *Southwest San Antonio Mobility Study (1997),* also referred to as the *Mobility Study (1997)*, and the *Mobility 2025-Metropolitan Transportation Plan* (MTP), also referred to as Mobility 2025, released in December 1999 by the San Antonio - Bexar County Metropolitan Planning Organization (MPO). Kelly Parkway will help the transportation system meet mobility needs and travel demands in the South San Antonio/KellyUSA vicinity as well as in southwest San Antonio. Kelly Parkway will provide a direct link between US90 and SH16, with connections to I-35, I-410, KellyUSA, and the Union Pacific Railroad (UPRR) Intermodal Terminal. At present, the existing arterial capacity is inadequate for the efficient movement of traffic carrying people, goods, and services between these various facilities.

Alternative 5 is the selected alternative and is the locally preferred alternative. Throughout the Environmental Impact Statement (EIS) process, it was necessary to weigh the concerns of thousands of stakeholders and determine which course of action would yield the greatest overall benefits. Alternative 5 was identified as the locally preferred alternative through the extensive public involvement effort undertaken as part of this project. This effort began with a preliminary design conference held in April 2000; it included over 100 stakeholder meetings (held over 3 $\frac{1}{2}$ years), four working committees, a public involvement office, a web site, public educational workshops, four major public meetings, and concluded with a public hearing held on January 27, 2004. The engineering analyses - including cost-effectiveness, operational design, and constructability reviews - indicated that Alternative 5 was technically sound. The environmental analyses assessed the impacts to some 20 categories of potential environmental impact such as land use, farmlands, social environment, ecosystems, and historic and archaeological resources. Alternative 5 ranked highest among the eight alternatives analyzed, having the least environmental impacts.

A Notice of Intent to prepare an EIS for Kelly Parkway was published in the *Federal Register* on June 9, 2000. Detailed studies and analyses were conducted to develop alternatives, address public and agency concerns, and address social, economic, and environmental impacts. The Draft EIS was approved on December 8, 2003, and a notice of its availability was published in the *Federal Register* on December 22, 2003. A public hearing was held on January 27, 2004. Alternative 5 was chosen as the Preferred Alternative.

Alternatives Considered

Numerous conceptual alternatives were proposed to meet the Kelly Parkway study area's transportation needs. The initial list of alternatives was termed the "Universe of Options." Three workshops were held for the initial screening, which reduced the Universe of Options from 1,440 possible alternative alignment combinations down to the "Top 40" alternatives. A second screening process was then used to reduce the "Top 40" alternatives to a select group that included those conceptual alternatives which were carried forward into the EIS. Of the Top 40 alternatives evaluated, eight build alternatives that best met the criteria were advanced for further detailed analyses along with the No-Build Alternative. These build alternatives have been termed the "Six-Pack" and consist of Alternatives 1 through 8.

For the purpose of developing and evaluating the alternatives, the study area was broken into four sections, taking into consideration comparable area demographics, traffic volumes, and environmental and design constraints. The four areas were: General Hudnell Drive, Quintana Road/UPRR, SW Military Drive to I-35, and I-35 to SH16. Although there were eight different build alternatives proposed, there was only one alignment in the General Hudnell section, and only two alignments within each of the other three sections; basically, an eastern alignment and a western alignment. Within each of these alignments, there were different nodes or connecting points proposed for each alternative. This leads to eight different possible build alternative combinations throughout the four sections.

Each build alternative proposed a different alignment for a multi-lane arterial meeting National Highway System Standards to serve the needs of the Kelly Parkway corridor. All of the build alternatives consisted of a minimum of four 12-foot travel lanes (two in each direction) with the right of way envelope typically ranging from 200 to 250 feet and widening to upwards of 400 feet at diamond interchanges and up to 1,000 feet at directional interchanges.

The No-build Alternative consists of the existing transportation system (roadway, bus transit, freight rail, bikeway, sidewalks) and the maintenance and reconstruction necessary to preserve this existing infrastructure in the study area and maintain bridge structural integrity for 20 years. In addition, the No-build Alternative includes improvement projects with committed funding including US 90/36th Street interchange (TxDOT), 36th Street - US 90 to Growden (City of San Antonio (COSA)), Fay Street Phase 1 - Quintana to Crittenden (COSA), Fay Street Phase II - Crittenden to Loop 353 (COSA), and General Hudnell Enhancement Project (Greater Kelly Development Authority (GKDA)). Other planned transportation improvements, including New Luke Road (COSA/GKDA), Berman/SW Military (COSA/GKDA) and others identified in the *Southwest San Antonio Mobility Study (1997)*, may or may not be implemented, depending on project development and funding availability for each improvement. This alternative is the baseline against which the other alternatives were compared.

In an effort to further improve Alternative 5, refinements were made between the August 27, 2002, public meeting and the publishing of the Draft EIS. These refinements were made in response to new information obtained during a more detailed analysis of Alternative 5, a commitment by Union Pacific Railroad to sell the tracks that parallel General Hudnell Drive, and the community's continued emphasis on minimizing impacts to homes, schools, water wells, and farmlands. These changes were reviewed during a Value Engineering Study conducted June 2, through June 6, 2003, at TxDOT's Bexar Metro Area Office. The value engineering team identified several ways to minimize impacts to the environment and to improve cost-effectiveness. A meeting with property owners affected by the refined alignment was held on July 24, 2003, to discuss the proposed changes. The public was able to comment on the changes to Alignment 5 at the educational workshop held on January 15, 2004. These changes are described in Section 4.22 of the Final EIS and were presented at the Public Hearing on January 27, 2004.

The evaluation of the eight alignment alternatives and the No-Build alternative in Sections 3.0 and 4.0 of the Final EIS was based on analysis of economic, social, and environmental factors of the affected environment. These factors included land use, socioeconomic conditions,

noise, air quality, farmlands, water resources, ecological resources, cultural resources, hazardous materials, visual and aesthetic qualities, Section 4(f) properties, and construction. The impacts were evaluated by using a systematic interdisciplinary approach. A matrix in Appendix 10.3 of the Final EIS also illustrates the comparison of the alternatives. Several factors discussed below played a major role in the determination of the selected alternative.

Alternative 5 will require acquisition of approximately 386.5 acres of right of way, which is significantly less than the right of way required for the other build alternatives (approximately 475 to 497 acres). Most of this difference can be attributed to the refinements recommended by the value engineering study which result in acquisition of fewer areas of extractive, residential, and agricultural land uses. Although there will still be approximately six severed parcels of agricultural property, there is a significant reduction in total acres that would be severed from one large farm tract-55 acres under Alternatives 1 through 4 and 6 through 8, but only eight acres under Alternative 5. Alternative 5 and Alternative 6 will displace three businesses, which is significantly fewer than the necessary displacement of 31 to 35 businesses under Alternatives 1 through 4 and the seven businesses displaced under Alternatives 7 and 8.

Because of the ethnic and socioeconomic composition of the Kelly Parkway study area, nearly any significant impact, whether beneficial or adverse, would affect minority and low-income populations. No displacements would occur under the No-build Alternative. In looking at the estimated total number of minority and low-income residents adversely affected, Alternatives 1 through 4 and 6 through 8 would have considerably greater relocation impacts on the minority and low-income populations than Alternative 5, which is estimated to displace 181 persons of Hispanic origin versus an estimated 406 to 943 persons with the other alternatives. The estimated number of persons in below-poverty level households who would be relocated under Alternative 5 is 66 people, in contrast with the estimated 182 to 376 below-poverty residents relocated under the other alternatives. The total estimated number of residents relocated would be 193 people under Alternative 5, which is less than the estimated relocation impacts of the other alternatives, which would displace an estimated 466 to 1,001 persons.

No effects to groundwater or water wells are anticipated from the No-build Alternative. Each build alternative would displace irrigation water wells. Alternatives 2, 4, 5, 6, and 8 would each displace two irrigation wells. Alternatives 1, 3 and 7 would each displace three irrigation wells. Adverse secondary effects include impacts on water wells used for irrigation where agricultural parcels are separated from the water wellhead. Although the wellhead itself would not be affected, it would require boring and piping under Kelly Parkway so that other parcels currently served by these wells could be irrigated. Of particular importance is a public water supply well located just north of I-35 between Alternatives 1 and 5 and Alternatives 2 and 6. This well is an Edwards Aquifer well that currently provides drinking water to six households to the south of I-35 and several tracts of farmland to the east, west, and south. All build alternatives would have an impact on this well. In addition, all six water wells, including the public water supply well, would be affected by parcel separation.

Alternatives 1, 3, 5, and 7 would have four potential impacts to floodplains, consisting of two major crossings of Leon Creek and two minor longitudinal encroachments. Alternatives 2, 4, 6, and 8 have five potential impacts to floodplains, consisting of two major crossings of Leon Creek, additional crossings at the proposed I-410 interchange, one major longitudinal encroachment on the Leon Creek floodplain, and one minor longitudinal encroachment on the Indian Creek floodplain. Alternative 5's four potential impacts present the least amount of floodplain impact overall due to the refinements in the alignment that reduced acres affected (see Final EIS, Section 4.11, Floodplain Impacts).

The FEIS indicates that, although there are long-term, potentially adverse social, economic, and environmental impacts from the proposed action, the beneficial impacts outweigh the negative impacts. Based on the alternative analysis for the Kelly Parkway, the refined Alternative 5 was selected as the preferred alignment alternative due to the fewer environmental impacts the alternative would cause, and because it best meets the purpose and need of the proposed project as described in Section 1.0 of the Final EIS.

Section 4(f)

Under Alternatives 1 through 4, the Section 4(f) site known as South San Community Center would be displaced to satisfy Kelly Parkway right of way requirements. In addition, Alternatives 1 through 4 would result in the taking of two buildings that have been identified as significant historic properties. Alternative 5 will not require the direct or constructive use of parkland, the South San Community Center or the use of any significant historic site. A Section (f) statement was not prepared.

Measures to Minimize Harm

Design Consideration - The design of Alternative 5 has included considerable coordination, during the scoping process, public meetings, stakeholder meetings, and a public hearing. These meetings were held to establish a project design that would minimize community impacts, while meeting the purpose and need of the project. In addition, the project was designed to comply with the requests of the appropriate environmental agencies.

Relocation Impacts - The acquisition and relocation program will be conducted in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. In addition, TxDOT will take into consideration during the relocation process the concerns and interests of extended families living together or in close proximity to one another. Two commercial businesses are affected by Alternative 5. Some property will be acquired for right of way from Monterrey Iron and Metal.

Farmland Impacts - Some impacts involving access restrictions to existing agricultural operations may occur; however, TxDOT will ensure that access is restored to all affected parcels. In addition, small parcels that are separated by land fragmentation and are no longer economically feasible to farm will be entirely compensated for by TxDOT during the right of way acquisition process.

Noise Impacts - A preliminary evaluation of noise abatement measures indicated that noise barriers would likely be both feasible and reasonable for four residential areas along Alternative 5. The final decision to construct the proposed noise barriers will be made upon completion of the project design and public involvement process.

Groundwater Impacts - Two irrigation wells will be displaced by Alternative 5. Mitigation for water well displacement or parcel separation may include water rights purchase by TxDOT, boring and piping underneath Kelly Parkway to install irrigation equipment, or drilling new water wells. Specific mitigation measures will be adopted following completion of final project design and further consultation with affected property owners. Existing groundwater contamination may affect roadway construction activities when the construction requires excavation to the depth of the water table or below. This may occur when the roadway is constructed below grade, during excavation for storm sewers or other underground utilities, or during excavation for

placement of support structures for roadway structures. Any contaminated groundwater that is withdrawn during dewatering activities will be managed in accordance with federal, state and local regulations. In addition, precautions will be taken to ensure that construction workers are not exposed to potentially unsafe or hazardous working conditions, in accordance with current Occupational Safety and Health Administration (OSHA) regulations.

Surface Waters - Pursuant to the Memorandum of Understanding (MOU) between TxDOT and Texas Commission on Environmental Quality (TCEQ), coordination will occur between these two agencies since Leon Creek is listed on the approved Texas 2002 Clean Water Act Section 303 (d) List as Segment # 1906. To minimize and mitigate adverse water quality impacts, appropriate design elements will be incorporated into the facility's construction and maintenance operations. The water quality of the waters of the State will be maintained in accordance with all applicable provisions of the Texas Surface Water Quality Standards. TxDOT will comply with the TCEQ Texas Pollutant Discharge Elimination System (TPDES) storm water permit program which implements the National Pollutant Discharge Elimination System (NPDES). A Notice of Intent (NOI) will be filed with the EPA / TCEQ, and a Storm Water Pollution Prevention Plan (SW3P) will be in place during project construction. The SW3P will specify temporary and permanent erosion, drainage and discharge control measures for the project site and all construction equipment staging areas.

In accordance with recent TCEQ Section 401 Water Quality Certification conditions for Tier I projects, Best Management Practices (BMPs) will be used to maintain on-site water quality after construction. In addition to those BMPs required for Tier 1 projects, TCEQ conditionally certifies that activities authorized by U.S. Army Corps of Engineers (USACE) Section 404 Nationwide Permit 14 (Linear Transportation Projects) should not result in a violation of established Texas Water Quality Standards provided that at least one BMP from each of the three categories listed in Table 4.12 and Table 4.13 of the Final EIS will be used and remain in place until the area has been stabilized. Incorporation of BMPs approved by TCEQ for Tier I Section 401 projects will allow a Section 404 permit application to proceed without further review by TCEQ. Specific Tier I BMPs will be selected during later stages of the design process and incorporated into the SW3P. Considering that greater than 1,500 linear feet of streams may be impacted, the project may be considered Tier II and subject to an Individual 401 Certification Review, which would require a copy of the USACE permit application and the mitigation plan to be submitted. Compensation for impacts to jurisdictional waters will be determined during later stages of the design process and will be included in the 404 Individual Permit application or Preconstruction Notification. Appropriate post construction BMPs will be included in the project design to address pollutant loadings and impacts from highway storm water runoff in accordance with TxDOT's MS4 permit.

Impacts to Waters of the US - Alternative 5 would potentially affect Leon Creek at two stream crossings (0.33 acre) and four wetlands (1.7 acres). Although most wetland and stream crossing impacts in this alternative are less than one-half acre at each crossing, one crossing is greater than one-half acre and may require an individual Section 404 permit. Unnecessary impacts will be avoided, and unavoidable impacts will be mitigated. A mitigation plan will be included in any Section 404 permit application or pre-construction notification sent to the USACE.

Floodplain Impacts - Alternative 5 would impact fifty acres of the floodplain. Major creek crossings will be designed in compliance with the Federal Emergency Management Authority (FEMA) rules limiting the increase in the 100-year peak flood elevation to one foot. The amount of fill in the floodplain will be minimized by elevating the majority of the alignment on bridge structure to the extent that it is cost effective and maintains compliance with Executive Order 11988 and 23 CFR 650A. The impacts of piers in the floodplains can be mitigated by minor improvements to the channel and overbank areas. As recommended in 23 CFR 650A, a risk analysis that considers cost includes a detailed hydraulic study, and assesses potential floodplain impacts to private property and structures will be performed for all bridge structures. For any major floodplain encroachments, the potential exists for a submission of a Letter of Map Revision to FEMA. Sections with longitudinal floodplain encroachments will be designed to minimize fill within the floodplain utilizing methods such as steep protected slopes and/or retaining walls to reduce the footprint of the roadway. To avoid major floodplain encroachments, portions of the alignment will be elevated on structures to utilize some of the flood storage that otherwise would be cut off from the proposed embankment. Structures designed for this situation will also be evaluated by a risk analysis. Minimizing the construction of work roads and construction areas would minimize construction impacts in the area. Following construction, work areas will be restored to equal or better conditions than existed before construction.

Impacts to Ecosystems - Urban, agricultural/cropland and developed/disturbed lands would be the dominant habitat types affected by Alternative 5. There would be low to moderate impacts to upland woods/parks (19.6 acres), scrub-shrub (8.7 acres), riparian (7.5 acres), and fencerow woods (2.7 acres). Mitigation will primarily be through minimizing impacts to highly valued habitat types, best achieved by development of a project design that reduces the amount of unavoidable habitat impacts, such as bridging affected sites.

Hazardous Materials Site Impacts - There are 22 sites with potential hazardous materials concerns located along Alternative 5. To complete the construction of Kelly Parkway, mitigation may be required for potentially hazardous materials present in the right of way, as well as for contaminated soil and groundwater that may be present within the right of way. No analytical data was available in making a determination about hazardous materials impacts at most sites. Therefore, additional investigation will be conducted within the right of way of Alternative 5 including the collection and analysis of soil and groundwater samples prior to construction. This additional investigation will assist in reducing uncertainty regarding actual impacts.

Monitoring or Enforcement Program

All commitments and conditions of approval stated in the Final EIS (Chapter 4 Environmental Analysis and Consequences) will be monitored by TxDOT and other appropriate state, federal and local agencies to ensure compliance.

Comments on the Final EIS

As a result of the Final EIS circulation for agency and public comment, two responses were received. The City of San Antonio responded to the publication to "add our support for the document as written." In a letter dated January 7, 2005, the Edwards Aquifer Authority (EAA) stated their support of the Final EIS as long as the Edwards Aquifer wells in the study area are properly constructed. This project will comply with all Edwards Aquifer Authority Rules.

Conclusion

Based on the analysis and evaluation contained in the Final EIS and after careful consideration of all the social, economic, and environmental factors and input from the public involvement process, it is my decision to adopt Alternative 5 (the selected alternative) as the proposed action for this project.

Signed on February 2, 2005 by Salvador Deocampo, P.E., District Engineer, Texas Division, Federal Highway Administration.

TRD-200500894
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: March 1, 2005

♦ ♦ ♦

Texas Workers' Compensation Commission

Invitation to Apply to the Medical Advisory Committee (MAC)

The Texas Workers' Compensation Commission seeks to have a diverse representation on the MAC and invites qualified individuals from all regions of Texas to apply for openings on the MAC in accordance with the eligibility requirements of the *Procedures and Standards for the Medical Advisory Committee*. The Medical Review Division is currently accepting applications for the following Medical Advisory Committee representative vacancies:

Primary

* Public Health Care Facility

Alternate

* Public Health Care Facility

* Dentist

* Podiatrist

* Employer

* Employee

* General Public Representative 1

* General Public Representative 2

Commissioners for the Texas Workers' Compensation Commission appoint the Medical Advisory Committee members who are composed of 18 primary and 18 alternate members representing health care providers, employees, employers, insurance carriers, and the general public. Primary members are required to attend all Medical Advisory Committee meetings, subcommittee meetings, and work group meetings to which they are appointed. The alternate member may attend all meetings, however during a primary member's absence, the alternate member must attend meetings to which the primary member is appointed. Requirements and responsibilities of members are established in the Procedures and Standards for the Medical Advisory Committee as adopted by the Commission.

The Medical Advisory Committee meetings must be held at least quarterly each fiscal year during regular Commission working hours. Members are not reimbursed for travel, per diem, or other expenses associated with Committee activities and meetings. Voluntary service on the Medical Advisory Committee is greatly appreciated by the TWCC Commissioners and the TWCC Staff.

The purpose and task of the Medical Advisory Committee, which includes advising the Commission's Medical Review Division on the development and administration of medical policies, rules and guidelines, are outlined in the Texas Workers' Compensation Act, §413.005.

Applications and other relevant Medical Advisory Committee information may be viewed and downloaded from the Commission's website at *http://www.twcc.state.tx.us*. Click on 'Commission Meetings', then 'Medical Advisory Committee'. Applications may also be obtained by calling Jane McChesney, MAC Coordinator, at 512-804-4855 or Ruth Richardson, Manager of Monitoring, Analysis and Education, Medical Review Division at 512-804-4850.

The qualifications as well as the terms of appointment for all positions are listed in the Procedures and Standards for the Medical Advisory Committee. These Procedures and Standards are as follows:

LEGAL AUTHORITY The Medical Advisory Committee for the Texas Workers' Compensation Commission, Medical Review Division is established under the Texas Workers' Compensation Act, (the Act) §413.005.

PURPOSE AND ROLE The purpose of the Medical Advisory Committee (MAC) is to bring together representatives of health care specialties and representatives of labor, business, insurance and the general public to advise the Medical Review Division in developing and administering the medical policies, fee guidelines, and the utilization guidelines established under §413.011 of the Act.

COMPOSITION Membership. The composition of the committee is governed by the Act, as it may be amended. Members of the committee are appointed by the Commissioners and must be knowledgeable and qualified regarding work-related injuries and diseases.

Members of the committee shall represent specific health care provider groups and other groups or interests as required by the Act, as it may be amended. As of September 1, 2001, these members include a public health care facility, a private health care facility, a doctor of medicine, a doctor of osteopathic medicine, a chiropractor, a dentist, a physical therapist, a podiatrist, an occupational therapist, a medical equipment supplier, a registered nurse, and an acupuncturist. Appointees must have at least six (6) years of professional experience in the medical profession they are representing and engage in an active practice in their field.

The Commissioners shall also appoint the other members of the committee as required by the Act, as it may be amended. An insurance carrier representative may be employed by: an insurance company; a certified self-insurer for workers' compensation insurance; or a governmental entity that self-insures, either individually or collectively. An insurance carrier member may be a medical director for the carrier but may not be a utilization review agent or a third party administrator for the carrier.

A health care provider member, or a business the member is associated with, may not derive more than 40% of its revenues from workers compensation patients. This fact must be certified in their application to the MAC.

The representative of employers, representative of employees, and representatives of the general public shall not hold a license in the health care field and may not derive their income directly from the provision of health care services.

The Commissioners may appoint one alternate representative for each primary member appointed to the MAC, each of whom shall meet the qualifications of an appointed member.

Terms of Appointment: Members serve at the pleasure of the Commissioners, and individuals are required to submit the appropriate application form and documents for the position. The term of appointment for any primary or alternate member will be two years, except for unusual circumstances (such as a resignation, abandonment or removal from the position prior to the termination date) or unless otherwise directed by the Commissioners. A member may serve a maximum of two terms as a primary, alternate or a combination of primary and alternate member. Terms of appointment will terminate August 31 of the second year following appointment to the position, except for those positions that were initially created with a three-year term. For those members who

are appointed to serve a part of a term that lasts six (6) months or less, this partial appointment will not count as a full term.

Abandonment will be deemed to occur if any primary member is absent from more than two (2) consecutive meetings without an excuse accepted by the Medical Review Division Director. Abandonment will be deemed to occur if any alternate member is absent from more than two (2) consecutive meetings which the alternate is required to attend because of the primary member's absence without an excuse accepted by the Medical Review Division Director.

The Commission will stagger the August 31st end dates of the terms of appointment between odd and even numbered years to provide sufficient continuity on the MAC.

In the case of a vacancy, the Commissioners will appoint an individual who meets the qualifications for the position to fill the vacancy. The Commissioners may re-appoint the same individual to fill either a primary or alternate position as long as the term limit is not exceeded. Due to the absence of other qualified, acceptable candidates, the Commissioners may grant an exception to its membership criteria, which are not required by statute.

RESPONSIBILITY OF MAC MEMBERS Primary Members. Make recommendations on medical issues as required by the Medical Review Division.

Attend the MAC meetings, subcommittee meetings, and work group meetings to which they are appointed.

Ensure attendance by the alternate member at meetings when the primary member cannot attend.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies.

Alternate Members. Attend the MAC meetings, subcommittee meetings, and work group meetings to which the primary member is appointed during the primary member's absence.

Maintain knowledge of MAC proceedings.

Make recommendations on medical issues as requested by the Medical Review Division when the primary member is absent at a MAC meeting.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies when the primary member is absent from a MAC meeting.

Committee Officers. The TWCC Commissioners designate the chairman of the MAC. The MAC will elect a vice chairman. A member shall be nominated and elected as vice chairman when he/she receives a majority of the votes from the membership in attendance at a meeting at which nine (9) or more primary or alternate members are present.

Responsibilities of the Chairman: Preside at MAC meetings and ensure the orderly and efficient consideration of matters requested by the Medical Review Division; prior to meetings, confer with the Medical Review Division Director, and when appropriate, the TWCC Executive Director to receive information and coordinate:

a. Preparation of a suitable agenda.

b. Planning MAC activities.

c. Establishing meeting dates and calling meetings.

d. Establishing subcommittees.

e. Recommending MAC members to serve on subcommittees.

If requested by the Commission, appear before the Commissioners to report on MAC meetings.

COMMITTEE SUPPORT STAFF The Director of Medical Review will provide coordination and reasonable support for all MAC activities. In addition, the Director will serve as a liaison between the MAC and the Medical Review Division staff of TWCC, and other Commission staff if necessary.

The Medical Review Director will coordinate and provide direction for the following activities of the MAC and its subcommittees and work groups:

Preparing agenda and support materials for each meeting.

Preparing and distributing information and materials for MAC use.

Maintaining MAC records.

Preparing minutes of meetings.

Arranging meetings and meeting sites.

Maintaining tracking reports of actions taken and issues addressed by the MAC.

Maintaining attendance records.

SUBCOMMITTEES The chairman shall appoint the members of a subcommittee from the membership of the MAC. If other expertise is needed to support subcommittees, the Commissioners or the Director of Medical Review may appoint appropriate individuals.

WORK GROUPS When deemed necessary by the Director of Medical Review or the Commissioners, work groups will be formed by the Director. At least one member of the work group must also be a member of the MAC.

WORK PRODUCT No member of the MAC, a subcommittee, or a work group may claim or is entitled to an intellectual property right in work performed by the MAC, a subcommittee, or a work group.

MEETINGS Frequency of Meetings. Regular meetings of the MAC shall be held at least quarterly each fiscal year during regular Commission working hours.

CONDUCT AS A MAC MEMBER Special trust has been placed in members of the Medical Advisory Committee. Members act and serve on behalf of the disciplines and segments of the community they represent and provide valuable advice to the Medical Review Division and the Commission. Members, including alternate members, shall observe the following conduct code and will be required to sign a statement attesting to that intent.

Comportment Requirements for MAC Members:

Learn their duties and perform them in a responsible manner;

Conduct themselves at all times in a manner that promotes cooperation and effective discussion of issues among MAC members;

Accurately represent their affiliations and notify the MAC chairman and Medical Review Director of changes in their affiliation status;

Not use their memberships on the MAC: a. in advertising to promote themselves or their business. b. to gain financial advantage either for themselves or for those they represent; however, members may list MAC membership in their resumes;

Provide accurate information to the Medical Review Division and the Commission;

Consider the goals and standards of the workers' compensation system as a whole in advising the Commission;

Explain, in concise and understandable terms, their positions and/or recommendations together with any supporting facts and the sources of those facts;

Strive to attend all meetings and provide as much advance notice to the Texas Workers' Compensation Commission staff, attn: Medical Review Director, as soon as possible if they will not be able to attend a meeting; and

Conduct themselves in accordance with the MAC Procedures and Standards, the standards of conduct required by their profession, and the guidance provided by the Commissioners, Medical Review Division or other TWCC staff.

TRD-200500916
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: March 1, 2005

How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 29 (2004) is cited as follows: 29 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "29 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 29 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC)*** is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 16, April 9, July 9, and October 8, 2004). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704..............950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).

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